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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1317.

THE FIRST NATIONAL BANK OF CLEVELAND, OHIO; THE MAHONING NATIONAL BANK OF YOUNGSTOWN, OHIO; WICK BROTHERS AND COMPANY; THOMAS H. WELLS; THE FIRST NATIONAL BANK OF GREENVILLE, PENNSYLVANIA; AND THE SECOND NATIONAL BANK OF ERIE, PENNSYLVANIA, APPELLANTS,

vs.

JOHN M. SHEDD, TRUSTEE, AND HENRY RAWLE, TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED DECEMBER 23, 1886.

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1 Among the rolls, records, and judicial proceedings had in the circuit court of the United States in and for the western district of Pennsylvania, wherein John M. Shedd, trustee, &c., *et al.* are complainants and The First National Bank of Cleveland, Ohio, *et al.* are defendants, entered at No. 25, May term, 1884, may be found the following words and figures, to wit:

Equity Docket Entries.

May Term, 1884.

JOHN H. DEVEREUX, Trustee, a Citizen of the State of Ohio,
vs.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY, a Corporation Incorporated, Organized, and Existing Under the Laws of the State of Pennsylvania. } No. 25.

B. F. Dunning, Jas. A. Shanahan, Wayne MacVeagh, George Sheras, Jr., for S. & A. R. R. Co.; Francis Rawle, for Henry Rawle, trustee.

Bill filed May 1, 1884. Same day.—Subpœna issued; returnable second Monday of May, 1884.

1884, May 3.—Subpœna served upon A. H. Steel, pres't of the Shenango & Allegheny Railroad Company, personally and by copy. Mar., $11.50.

2 1884, June 27.—Stipulation of counsel that time for filing answer be extended till ten days after notice to defendant to file same filed.

1885, June 26.—Answer of defendant filed.

1885, June 30.—By consent of Thomas P. Fowler, receiver of defendant company, and on motion of counsel for complainant, leave granted said complainant to file the bill herein *nunc pro tunc* as of the date of the filing of said bill, per order filed.

1885, September 5.—By order and leave of court, amended bill against The Shenango and Allegheny Railroad Company, Henry Rawle, trustee; Thomas P. Fowler, receiver; The Bristol and South Wales Railway Wagon Co., L't'd; The Union Rolling Stock Co., L't'd, and William A. Adams filed, and same day subpœna thereon issued; returnable first Monday of October next.

1885, Sept. 17.—Precipe for appearance of Davies, Cole & Rapallo, Esqrs., for defendants, The Bristol and South Wales Railway Wagon Co., L't'd; The Union Rolling Stock Co., L't'd, and William A. Adams, filed.

1885, Sept. 25.—Wayne MacVeagh, Esq., appears for defendant, Thomas P. Fowler, receiver.

1885, October 5.—Subpœna upon amended bill returned. Service accepted by George Shiras, Jr., for the Shenango & Allegheny R. R. Co. Sept. 22d, 1885. Service accepted by Thomas P. Fowler Sept. 22d, 1885. Mar., $5.00.

3 1885, Nov. 9.—Answer of defendants, The Bristol and South Wales Wagon Co., "Limited," The Union Rolling Stock Co., "Limited," and William A. Adams, to the amended bill of complaint filed.

1885, November 10.—Stipulation extending time of the defendants, The Union Rolling Stock Co., L't'd; The Bristol and South Wales Railway Wagon Co., L't'd, and William A. Adams, to plead, answer, or demur to the complaint herein to and including the ninth day of November, 1885, filed.

November 20, 1885.—Replication filed.

1886, March 8.—Acceptance of service of amended bill filed herein by Francis Rawle on behalf of Henry Rawle, trustee, and precipe for appearance filed.

1886, April 16.—Petition of John M. Shedd praying to be substituted as plaintiff herein in the room and stead of John H. Devereux, deceased, with like effect, as if under and by virtue of a bill of revivor, together with stipulation of counsel, filed, and decree thereon substituting as plaintiff the said John M. Shedd.

1886, May 8.—Petition of the First National B'k, Cleveland, Ohio; Second Nat'l B'k, Erie, Pa.; First Nat'l B'k, Greenville; Mahoning Nat. B'k, Youngstown; Wick Bros. & Co., and Thomas H. Wells, praying for leave to intervene and become parties defendants *pro inter esse suo*, and to file cross-bills or other pleadings as may be proper, and upon motion leave granted to file same, and mo-
4 tion for leave to intervene fixed for hearing May 19, 1886, notice to be given counsel for complainant and defendant railroad and Henry Rawle, trustee.

1886, May 15.—Notice of filing petition of First National B'k, Cleveland, and others, with proof of service of notice on E. S. Templeton, sol. for def't, and D. T. Watson, sol. for Henry Rawle, trustee. Same day.—Like notice, with proof of service on Wayne MacVeagh, Esq., sol. for receiver, endorsed thereon, filed.

1886, May 20.—Affidavit of Thomas H. Wells filed.

1886, May 21.—Affidavit of Joseph McCarter filed. Hearing on above petition to intervene fixed for June 10, 1886.

1886, June 8.—Affidavit of Paul Wick on petition of First National Bank to intervene filed.

1886, June 10.—Proof of service of notices of filing petition of First National Bank, Cleveland, O., *et al.* to intervene, &c., and of time for hearing same filed. Same day.—Answer of Henry Rawle, trustee, to petition of First Nat. B'k of Cleveland *et al.* filed. Same day.—Order granted on the petition of First National Bank of Cleveland, O., *et al.*, allowing them to become parties plaintiff, and that they be allowed to file such pleadings and make such applications to the court as they may be advised proper for the protection of their interests; order filed.

1886, June, 12.—Amended bill of John M. Shedd, trustee,
5 in the place and stead of John H. Devereux, deceased, against The Shenango and Allegheny Railroad Company, a corporation, citizen of Pennsylvania; Henry Rawle, trustee, a citizen of Penna.; Thomas P. Fowler, receiver of the Shenango & Allegheny R. R. Co., a citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a corporation and citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a corporation and citizen of the Kingdom of Great

Britain, and William A. Adams, a citizen of the Kingdom of Great Britain, filed by leave of court first had, per order endorsed thereon. Same day.—Cross-bill of Henry Rawle, trustee, against John H. Devereux, trustee; Shenango & Allegheny R. R. Co., Thomas P. Fowler, receiver; Bristol & South Wales Railway Wagon Co., Ltd; Union Rolling Stock Co., Limited, and William A. Adams filed by leave of court first had, per order endorsed thereon.

1886, June, 18.—Answers of The Shenango & Allegheny Railroad Company to amended bill of John M. Shedd, trustee, and cross-bill of Henry Rawle, trustee, filed. Same day.—Answer of Henry Rawle, trustee, to amended bill of John M. Shedd, trustee; also answers of Thomas P. Fowler, receiver, to amended bill of John M. Shedd, trustee, and cross-bill of Henry Rawle, trustee; also answer of John M. Shedd, trustee, to cross-bill of Henry Rawle, trustee, filed.

6 Same day.—Motion on behalf of John M. Shedd, trustee, for a decree of foreclosure; including an order of sale of the property of defendant Co., and also for a decree authorizing him to execute the power of sale under the deed of trust given to John H. Devereux, trustee, and of whom he is successor, and order thereon fixing June 30 for hearing thereon, notice to be given all parties in interest; also motion on behalf of Henry Rawle, trustee, for a decree of foreclosure, including an order of sale of property of deft Co., embraced in mortgage of which he is trustee, and also for a decree authorizing him, under the power of sale to him given, to sell the property of deft Co., and order fixing June 30, 1886, for hearing same, notice to be given all parties in interest.

1886, June, 26.—Answer of Second Nat. Bk, Erie, Pa., to cross-bill of Henry Rawle, trustee, filed. Same day.—Answers of First National Bk of Greenville, Pa., and First National Bank of Cleveland, Ohio, to cross-bill of Henry Rawle filed.

1886, June 29.—Answers of Mahoning National Bank of Youngstown, Ohio, T. H. Wells, to cross-bill of Henry Rawle, trustee, filed.

1886, June 30.—Answer of Wick Brothers to cross-bill of Henry Rawle, trustee, filed.

1886, June 30.—Arguments had on motions of J. M. Shedd, trustee, and Henry Rawle, trustee, for a decree of foreclosure, and order of sale of deft R. R. Co. C. A. V.

7 1886, July 12.—Answer *to* Lewis T. Watson to cross-bill of Henry Rawle, trustee, filed.

1886, July 13.—Opinion of the court filed on motions of John M. Shedd, trustee, and Henry Rawle, trustee, allowing a decree of sale of Shenango and Allegheny Railroad Company.

1886, Sept. 8.—Order granted fixing Sept. 30 for settling form of decree of sale of railroad. Notice of this order, to be given all parties of record, filed.

1886, October 14.—The above cause having come on to be heard on the 30th day of June, 1886, on motions of John M. Shedd, trustee, and Henry Rawle, trustee, for a decree of sale of the Shenango & Allegheny railroad, and all parties in interest having appeared, and *were* heard, and it appearing that default has been made in the payments of interest on the bonds issued under the trust deed to Henry Rawle,

trustee, and has continued for more than six months; that demand was made and the said company has neglected and refused to pay the said interest; that, under the provisions of said deed of trust, said trustee is entitled to sell said mortgaged premises under the terms of said mortgage; and it further appearing that default has been made in the payment of interest on bonds issued under a deed of trust to John H. Devereux, trustee, and said default has continued for a period of more than eighteen months; that demand was made for the payment of said interest and said company has neglected and refused to pay the same, and that, under the provisions of the said deed of trust, the trustee thereof is entitled to sell said mortgaged premises under the terms of said mortgage; that said mortgages given to the said trustees are valid and existing liens upon so much of the property as was thereby lawfully conveyed to said respective trustees; that there are outstanding, secured by the mortgage given to the said Rawle, trustee, bonds aggregating, at their face value, $1,000,000, with the interest coupons from October 1, 1884, outstanding, secured by the mortgage given to the said J. H. Devereux; bonds aggregating $375,000, with interest coupons from date of issue thereof, and outstanding receivers' certificates aggregating the sum of $155,849.87, with interest at 6%; that said certificates, together with the costs, charges, expenses, and liabilities of the receivership, and all just and proper compensation, expenses, and allowances to the receiver and the trustees, and to any of the parties to the said cause, are entitled to be paid out of the proceeds of said sale in the first instance, and are to be deducted therefrom before any payment upon the bonds—

8

The said Henry Rawle is authorized to sell all the property covered by the Rawle mortgage at public auction, at Shenango, on the 25th day of January, 1887, at 12 o'clock noon, after giving public notice of the time and place of such sale by advertisements, at least 3 times a week for 90 days, in one or more newspapers in the cities of New York, Philadelphia, Erie, and Meadville, to the highest and best bidder, and make report of such sale to this court; and the said John M. Shedd, trustee, is authorized to give notice to the board of directors of the Shenango & Allegheny R. R. Co. by service on the president or other officer of said company and by publication in one or more papers in the cities of New York, Pittsburgh, and Cleveland not less than 3 times a week for 90 days, and proceed to sell, at Shenango, the property covered by the mortgage, of which he is trustee, to the highest and best bidder on Jan'y 25, 1887, and make report thereof to this court.

9

And it appearing that there are conflicting claims in reference to priority of liens and their extent, and as to the number of bonds legally outstanding, and as to the amount of money due, and that the defendant railroad company is insolvent, it is, upon motion of the solicitors of John M. Shedd, trustee, and Henry Rawle, trustee, the solicitors for the company and receiver acquiescing therein, ordered, adjudged, and decreed that the said Henry Rawle and John M. Shedd be, and they are hereby, appointed special commissioners of this court to make sale of the property of defendant railroad

company at public auction on January 25, 1887, at Shenango, Mercer Co., Pa., at 12 o'clock noon, for a sum not less than $625,000, to the highest and best bidder, and make report to this court, all of said property to be offered as a whole and the payments to be made — $50,000 cash, and the balance within 60 days after said sale shall have been confirmed by the court and proper conveyances — from said trustees. The balance of the purchase money may be paid as follows: (A) in cash; (B) receivers' certificates, which shall be received as equivalent to cash; (C) as to so much of the purchase-money as may exceed cash payment and receivers' certificates, Rawle bonds and coupons and Devereux bonds and coupons may be used by the purchaser as cash to the extent of the estimated dividends, payable on said bonds and coupons held by such purchaser out of such excess, Rawle bonds and coupons to be considered as entitled to receive 60% and Devereux bonds and coupons 40% of the fund, such adjustment not to be construed as interfering with the ascertainment and adjustment of dividends to be paid on said bonds upon distribution of the funds by a master and decree of this court.

Upon confirmation of sale purchaser shall receive proper conveyances for the said property, which shall be free from all liens arising out of this litigation.

Said trustees to make report of all money received by them and all cash so received, less actual disbursements. Receivers' certificates and bonds and coupons received by them shall be deposited in the registry of this court and [be] subject to its order.

All controversies between the two trustees or bondholders thereunder touching the extent of the lien of said mortgages respectively, as well as all questions touching amounts due bondholders [are] reserved for future consideration and determination, unaffected by this decree.

To each and all the foregoing findings and to said decree The First National Bank of Cleveland, Ohio, The Second National Bank of Erie, Pa., First National Bank of Greenville, Pa., Mahoning National Bank of Youngstown, Ohio, Wick Brothers & Co., and Thomas H. Wells, of Youngstown, Ohio, object, and the objection is overruled; to each and all of which said parties except.

M. W. ACHESON.

1886, Dec. 7.—Petition of the First National Bank of Cleveland, The Mahoning National Bank of Youngstown, Wick Brothers *et* Co., and Thomas H. Wells, citizens of the State of Ohio; The First National Bank of Greenville and The Second National Bank of Erie, citizens of the State of Pa., praying for the allowance of an appeal to the Supreme Court of the United States; and order granted by Hon. Joseph P. Bradley, associate justice of the U. S. Supreme Court, dated at Washington, D. C., Nov. 5, 1886, allowing said appeal and fixing the amount of supersedeas bond at fifty thousand dollars; and bond approved Nov. 24, 1886, by Hon. Joseph P. Bradley, filed. Same day, citation, signed by Hon. Joseph P. Bradley, Nov. 24, 1886, issued, commanding John M. Shedd,

trustee, and Henry Rawle, trustee, to appear in the U. S. Supreme Court at Washington, D. C., on the second Monday of October, 1887.

1886, Dec. 7.—Copies of above petition for appeal lodged in the office of the clerk of this court for appellees herein.

1886, Dec. 9.—Acceptance of service of notice of citation by D. T. Watson, Esq., counsel for Henry Rawle, trustee, endorsed on said writ; and Dec. 10.—Acceptance of service thereof by Dunning & Edsall, counsel for John M. Shedd, and by John M. Shedd, trustee, as per endorsement on said writ.

12 To the judges of circuit court of the United States for the western district of Pennsylvania, in the third district.

John H. Devereux, a citizen of Ohio, residing in the city of Cleveland, in that State, as trustee, brings this his bill against the Shenango and Allegheny Railroad Company, a corporation, citizens of Pennsylvania; and thereupon your orator complains and shows as follows:

First. During the times hereinafter mentioned the defendant, The Shenango and Allegheny Railroad Company, was, and it still is, a corporation incorporated, organized, and existing under the laws of Pennsylvania and engaged in maintaining and operating a railroad in said State.

Second. On or about the 1st day of July, 1877, the said defendant, The Shenango and Allegheny Railroad Company, duly executed and delivered to your orator a deed of trust, in due form of law, wherein and whereby the said company, for the purpose of securing the payment of its certain bonds and coupons therein mentioned, did grant, bargain, and sell to your orator, as trustee, the entire railroad built, and to be built, of the said Shenango and Allegheny Railroad Company, from its junction with
13 the Atlantic and Great Western railroad, near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley railroad on the east side of the Allegheny river, together with all its branches, extensions, side tracks, switches, and turn-outs built and to be built, and also all the lands, rights, franchises, and appurtenances thereunto belonging, and also all the engines, locomotives, cars, tools, machinery, rolling-stock, supplies, and personal and real property of every name and nature connected with or belonging to the said company on or along its said railroad, and used by it in operating its said railroad, whether said property was then in existence or should thereafter be built or constructed, and whether said property had then be acquired by the said company or should be thereafter acquired by the said company, and also all the corporate rights and franchises of said railroad company.

A copy of said deed of trust is annexed hereto, marked Schedule A, and made a part of this bill, and your orator prays leave to refer thereto from time to time as occasion may require.

Third. Since the execution and delivery of said deed of trust a portion of the railway of the defendant company and its branches and extensions then remaining unbuilt or unfinished has been con-

structed and equipped, and has become subject to the lien of said trustee, as your orator is informed and believes.

Fourth. Said deed of trust was so as aforesaid executed and delivered to your orator to secure bonds of said company to be issued payable to your orator or bearer, in various sums, amounting in the aggregate to one million dollars, for the purposes therein set forth. The said bonds were to be payable on the 1st day of July, 1907, and were to draw interest at the rate of seven per centum per annum. Coupons were attached to the said bonds for the payment of the interest thereon at the rate aforesaid on the 1st days of January and July in each year until the maturity of said bonds.

Fifth. It was in and by said deed of trust provided that if at any time the said grantor should suffer and permit any of the coupons aforesaid to remain due and unpaid and in arrear for a period of eighteen months after the same should be due and payable, and after due demand of payment should be made at the place where the said coupons should be made due and payable, then the principal of the said bonded indebtedness should, at the option of one-tenth in amount of the holders thereof, become due and payable.

Sixth. Of the said bonds secured by the said deed of trust there were issued by the defendant company, in or about the year 1877, bonds amounting in the aggregate to the sum of $200,000, all of which are still outstanding and unpaid, and there have been since issued by said company in conformity with said deed and for purposes therein specified, and as still outstanding, additional bonds secured by the same deed of trust, amounting in the aggregate to the sum of $175,000, as your orator is informed and believes.

Seventh. The defendant company made default in the payment of the semi-annual interest, which became due and payable on $200,000 of said bonds on the first day of January, 1878, and has ever since suffered and permitted the coupons for said interest to remain due and unpaid and in arrear, although demand of payment was duly made more than eighteen months ago, at the place where the said coupons were made payable, and it is the desire of more than one-tenth in amount of the holders of all of the bonded indebtedness secured by said deed of trust, and they have elected and determined, that the principal of said bonded indebtedness shall become and be forthwith due and payable, as your orator is informed and verily believes.

Eighth. Besides the interest on said bonds so unpaid and remaining in default as aforesaid, the defendant company has also made default in the payment of other and later interest, which, from time to time became due and payable upon said bonds, and has suffered and permitted to remain due and unpaid and in arrear the coupons for such later interest since it accrued to the amount of upwards of $75,000 in the aggregate, as your orator is informed and verily believes.

Ninth. The defendant company is further indebted to a large amount for wages, materials, supplies, and otherwise, which it is

unable to pay, as your orator is informed and believes, but
16 to what amount and the particulars thereof your orator has no exact information.

Tenth. And your orator further shows on his information and belief, that the net revenues of said defendant company derived from the premises mortgaged to your orator in and by said trust deed, and which are its only source of income, have not only been insufficient to pay the interest on the outstanding bonds secured thereby in the past, but are and will continue to be inadequate to pay the interest due and to grow due thereon hereafter; that the net revenue and income of the mortgaged premises in equity belong to your orator as trustee, and that under the said deed of trust he is entitled to the possession and use of said mortgaged premises, and to collect, receive, and apply the net income received therefrom for the benefit of his *cestuis que trustent;* that, owing to the financial embarrassments of the defendant company, there is imminent danger that the mortgaged premises, or some part thereof, may be proceeded against by its unsecured and general creditors, to the damage and prejudice of your orator as such trustee, and that by reason thereof he is in danger of being subjected to great expense, trouble, and delay in protecting his rights and those of his *cestuis que trustent*, and that he is wholly without adequate remedy at law in the premises.

Eleventh. Your orator further shows that, by reason of his being engaged in the operation and management of an extensive
17 railroad system in other States, it is impracticable for him as such trustee to take the possession of the mortgaged premises and to use and operate the same and conduct its business under the provisions of said deed of trust, and that the appointment of a receiver by his honorable court, competent to take possession of said premises and operate the same during the pendency of this action, will be for the benefit and advantage of your orator and his *cestuis que trustent*, and of all of others interested therein.

Wherefore your orator prays judgment against the defendant company that an accounting may be had and taken in the premises of the amount of bonds outstanding and secured by the aforesaid deed of trust; that the whole amount of said bonds, both principal and interest, may be adjudged to have become due and payable according to the terms of said deed of trust; that the mortgaged premises be sold under direction of this honorable court for the satisfaction of the amount which may be found to be due to your orator as such trustee; and that meantime a receiver may be appointed to take possession of all and singular the mortgaged premises, to use and operate the same, and conduct its business, and to collect and receive the rents, profits, and incomes thereof for the benefit and advantage of your orator and his *cestuis que trustent* under said deed of trust, with proper directions as to an accounting and the application thereof from time to time pending this
18 action, and that your orator may have such other and further relief in the premises as to the court may seem just and proper—

May it please this honorable court to grant to your orator a writ-*ten* [of] subpœna, directed to the said The Shenango and Allegheny Railroad Company, commanding it, at a certain day and under a certain penalty to be therein inserted, to be and appear before this honorable court then and there to answer the premises and to stand and abide such order and decree therein as to this honorable court shall seem agreeble in equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

DUNNING, EDSALL & HART,
Solicitors for Complainant.

B. F. DUNNING,
Of Counsel.

19 STATE OF OHIO, } ss:
County of Cuyahoga, }

John H. Devereux, being duly sworn according to law, deposes and says that the facts set forth in the foregoing bill, so far as the same are stated of this deponent's knowledge, are true, and, so far as the same are stated on information and belief, are believed by him to be true.

JOHN H. DEVEREUX.

Sworn to and subscribed before me, a notary public in and for said Cuyahoga county, this seventh day of April, A. D. 1884.

[SEAL.] J. D. WANN,
Notary Public.

20 SCHEDULE A.

This indenture, made this first day of July, one thousand eight hundred and seventy-seven, between the Shenango and Allegheny Railroad Company, a corporation duly incorporated and organized under the laws of the Commonwealth of Pennsylvania, of the one part, and John H. Devereux, of the city of Cleveland, Cuyahoga county, in the State of Ohio, trustee, for the purposes hereinafter named, of the second part.

Whereas the said Shenango and Allegheny Railroad Company has agreed to issue its bonds payable to the said trustee, or bearer, in various sums, amounting in the aggregate to one million dollars, which bonds are to be issued for the purpose of paying an indebtedness of the said railroad company to H. Wollaston Blake and George Herring, trustees, incurred on account of the construction of a part of its railroad, and the remainder of said bonds are to be issued for the purpose of meeting and covering the cost of constructing and extending its railroad from the present terminus thereof at or near Hilliard's mills to or near the town of Petrolia, in Butler county, State of Pennsylvania, and from thence to its contemplated junction with the Allegheny Valley railroad on the east side of the Allegheny river, in said State, being a distance of about 22 miles; and the said bonds or a portion thereof are also to be issued for the purpose of constructing any branch or branches

leading from and connecting with the main line of the
21 Company's railroad, and also for the purpose of building side tracks, switches, depots, stations, and purchasing the necessary rolling-stock and equipment for the successful operation of said railroad; the said bonds are to be payable on the first day of July, one thousand nine hundred and seven, and are to draw interest at the rate of seven per centum per annum. Coupons are attached to the said bonds for the payment of the interest thereon at the rate aforesaid on the first days of January and July in each year until the maturity of the said bonds. The said bonds are numbered and are of the respective amounts as follows, to wit: Seven hundred and fifty bonds of one thousand dollars each, and numbered from one thousand one hundred and one to one thousand eight hundred and fifty, inclusive; four hundred and eighty bonds of five hundred dollars each, and numbered from one thousand eight hundred and fifty-one to two thousand three hundred and thirty, inclusive; and one hundred bonds of one hundred dollars each, and numbered from two thousand three hundred and thirty-one to two thousand four hundred and thirty, inclusive. Now, for the purpose of securing the payment of the bonds and coupons aforesaid, this indenture witnesseth: That the said Shenango and Allegheny Railroad Company, in consideration of the premises aforesaid and of one dollar paid by the said John H. Devereux, trustee, has granted, bargained, and sold, and by these presents does grant, bargain, and sell,
22 to the said John H. Devereux, trustee as aforesaid, and his successor or successors in the aforesaid trust, the entire railroad built, and to be built, of the said Shenango and Allegheny Railroad Company from its junction with the Atlantic and Great Western railroad near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley railroad on the east side of the Allegheny river, together with all its branches, extensions, side tracks, switches, and turn-outs built and to be built, and also all the lands, rights, franchises, and appurtenances thereunto belonging, and also all the engines, locomotives, cars, tools, machinery, rolling-stock, supplies, and personal and real property of every name and nature connected with or belonging to the said company on or along its said railway and used by it in operating its said railroad, whether said property is now in existence or shall hereafter be built or constructed, and whether said property has been acquired by the said company or shall be hereafter acquired by the said company, and also all the corporate rights and franchises of said railroad company.

This indenture, however, is subject to a previous mortgage on forty miles of the northwestern end of the railroad aforesaid and its appurtenances, executed to Henry Rawle, trustee, to secure the payment of the bonds of the company to the amount of one million dollars and the coupons thereto attached, which mortgage has been duly recorded in the counties of Mercer and Butler aforesaid;
23 to have and to hold the said railroad and the lands, rights, franchises, and privileges aforesaid, together with the engines, locomotives, cars, rolling-stock, and all the real and personal prop-

erty above mentioned now owned by the said railroad company, and which it may hereafter acquire, and which in any way appertain to the same, to him, the said John H. Devereux, trustee as aforesaid, and his successor or successors in office, forever, upon the trust, terms, and conditions following—that is to say, first, for the security of the bonds and interest thereon above mentioned; and if the interest on the bonds so to be issued shall not be paid by the party of the first part when the same shall fall due, and such interest shall remain in arrear for thirty days after due and demand of payment, or if there shall be failure to pay the principal of said bonds, or any of them, or any part thereof, when due and demandable, according to the tenor and effect thereof, then, in either case, it shall be lawful for the said trustee, or his successor or successors in office, to take possession of all and singular the railroad, rolling-stock, real and personal property, and premises aforesaid, conveyed or transferred or expressed, or intended so to be, and to cause the said railroad to be used and operated and its business conducted by the said trustee, and such agents, managers, and servants as he, his successor or successors, may appoint, and to apply the net income received therefrom to the payment, first, of the interest of said bonds, and the surplus to the payment of the principal thereof; and at any time after default shall be made in the payment of the principal and interest above mentioned, or any part thereof, for the period of thirty days after due and payment duly demanded upon the request of the holders of twenty-five thousand dollars in amount of said bonds or coupons, said John H. Devereux, trustee, his successor or successors in office, or whoever may then be trustee or trustees under this indenture, may and shall enter upon and take possession of all and singular the said premises hereby conveyed and transferred or expressed, or intended so to be, and shall hold possession of the same and use and operate the same, and apply the net income therefrom, after paying all costs and expenses, and a reasonable compensation to the said trustee, his successor or successors, to the payment of the interest and principal aforesaid; and if at any time the said grantor shall suffer and permit any of the coupons aforesaid to remain due and unpaid and in arrears for a period of eighteen months after the same shall be due and payable, and after due demand of payment shall be made at the place where the said coupons are payable, then the principal of the said bonded indebtedness shall, at the option of one-tenth in amount of the holders thereof, become due and payable, and the holder or holders thereof, in the name of the trustee aforesaid, his successor or successors in office, may maintain an action in law or in equity to recover the amount of the bonds and the accrued interest thereon then outstanding as aforesaid; and upon the fact judicially ascertained by the judgment of any court of competent jurisdiction that the grantor has thus been in default of the payment of any of the coupons aforesaid for the period of eighteen months or more, the said John H. Devereux, trustee, or his successor or successors in office, shall, at the request of any of the holders of said bonds, proceed to

foreclose this mortgage in accordance with the practice of the courts having jurisdiction thereof in the State of Pennsylvania, or in the circuit court of the United States of the proper district, and in the meantime the said John H. Devereux, trustee, and his successor or successors in office, shall be entitled, after default in the payment of any of the coupons aforesaid for the period of thirty days, to the possession, income, and use of the above mortgaged real and personal property, and each and every part thereof, and shall be entitled, after the payment of the costs and expenses and charges as aforesaid, to apply the net revenue or income thereof to the payment of any accrued interest or indebtedness accrued by the said mortgage and remaining unpaid; and whenever, by reason of any default aforesaid, the said John H. Devereux, as trustee, his successor or successors in office, would be required or entitled to proceed to foreclose said mortgage upon the ground that the principal of said bonds has fallen due, then and in such a case the said trustee, or whoever may then be trustee, may at his option, upon giving
26 notice in writing to the board of directors of the said company (which notice shall be served upon the president, secretary, or other acting officer of said company) and publishing notice in one or more newspapers published in the cities of New York, Pittsburgh, and Cleveland for the period of sixty days of his intention to do so, proceed to sell at public auction, at the junction of said railroad of said company with the Atlantic and Great Western railroad, near Greenville aforesaid, the entire real and personal property above mortgaged, and may execute to the purchaser a full, complete, and legal conveyance of all and singular the mortgaged premises aforesaid, or which may be sold by him or them as aforesaid, and from the proceeds of said sale, or of the operation of said railroad until sold, after deducting just allowances for the services of said trustee or trustees and his or their expenses and said trustee, his successor or successors in office, shall pay, first, the interest in arrear of said bonds, and then the principal thereof in full or ratably so far as such proceeds or income shall suffice for all charges and expenses of operating and maintaining said road and the management of the said business. The said trustee, his successor or successors in office, shall be indemnified out of the proceeds of the sale of said road if needful as well as out of income thereof. In case any surplus shall remain in the hands of the trustee, or his successor or successors in office, the same shall be paid over to the party of the first part, its successors or assigns. But it is distinctly under-
27 stood and agreed that if the said party of the first part shall well and truly pay the interest on the said bonds to be issued as the same shall fall due and be demanded, and also the principal thereof when the same shall fall due, and shall well and truly perform all the other covenants and conditions of said bonds, then the estate, title, and interest of the party of the second part, his successor or successors in office, and in this trust shall cease and determine and become void, but otherwise shall remain in full force and virtue in law.

It is agreed between the parties hereto that after the issue and de-

livery to the said Blake and Herring, trustees as aforesaid, of two hundred thousand dollars of the bonds aforesaid that none of the above bonds shall be issued by the party of the first part, except for the purpose of extending and constructing its railroad from its present terminus to or near the town of Petrolia aforesaid, or to the Allegheny river, or for the purpose of constructing said branch or branches, as its board of directors may deem necessary and proper to construct, or for the purpose of purchasing the necessary rolling-stock and equipment for its said railroad and for the purpose of constructing necessary switches and turn-outs, and in no event shall any of the said bonds be issued for the purposes of construction of branches or extension of the main line at a greater rate than twenty-five thou-
sand dollars per mile for each mile of railroad of a good and
28 substantial character which said railroad company may construct, and the said trustee is hereby prohibited from certifying to any of said bonds to be issued for such construction purposes—that is, for extension of main line or branches—at a greater rate than twenty-five thousand dollars per mile for such railroad as said company may actually construct; and it is hereby made the duty of said trustee to see that no bonds are allowed to be issued or are certified by him for such construction purposes until the actual letting and contracting for the construction of the proposed branch, branches, or extension, and then only as the work progresses and upon the certificate of the chief engineer of said road that the work is under contract or has been constructed. Nothing herein contained shall require said railroad company to construct more than one mile of the said road at any one time in order to entitle said railroad company to issue and sell twenty-five thousand dollars of the above-mentioned bonds. It is further agreed that if any of the aforesaid bonds shall be sold or required by the said railroad company for the purpose of providing rolling-stock for the use of said railroad or constructing switches, side tracks, or turn-outs, that before the trustee or trustees shall certify to the same it shall be necessary for the said railroad company to state to the said trustee in writing what rolling-stock, switches, side tracks, or turn-outs its board of directors desire to purchase or construct, and the estimated cost thereof; and
the said trustee, upon receiving such certificate from the
29 board of directors of the first party, and being satisfied that the money will be applied in good faith for the purpose of buying rolling-stock or constructing said tracks and switches or turn-outs, shall certify to a sufficient amount of the above-mentioned bonds to enable the officers of the said railroad company from the proceeds thereof to purchase the rolling-stock and construct the switches and side tracks and turn-outs so specified; and he shall, from time to time, upon like application, certify bonds to be sold or used for the purpose of buying rolling-stock for the equipment of said road and constructing switches, side tracks, and turn-outs as aforesaid. It is further understood and agreed that the said grantor will, during the existence of this mortgage, keep up and maintain its said railroad and equipment in its present good condition, and that it will, from time to time, make all such needful repairs, addi-

tions, and improvements in its roadway, stations, depots, shops, rolling-stock, and equipment as good and efficient railroad management may require, and that all disputes and questions, if any, under this paragraph between the trustee or trustees and said grantor shall be settled by three competent engineers, one to be chosen by each party and the third by the two thus chosen, and the decision of a majority of them shall be conclusive and binding, and the grantor shall at once make the improvements or repairs so agreed upon or required, and upon failure to do so within the time and in
30 the manner required by said referees the said trustee or the trustees shall be at liberty to take possession of said railroad and make such repairs or improvements and to defray the expense of such repairs or improvements from the income of said railroad.

In case the trustee herein mentioned shall die or resign or be removed his successor or successors in the trust shall be appointed by the grantor and the holders of the outstanding bonds secured by this mortgage by mutual agreement, and if they shall be unable to agree then the court of common pleas of Mercer county, Pennsylvania, shall appoint some suitable trustee, but said court shall not make any such appointment until the holders of at least two hundred thousand dollars in amount of said bonds shall be notified and have a reasonable time to attend before said court and be heard in regard to such appointment.

In testimony whereof the said grantor, The Shenango and Allegheny Railroad Company, hath, on this first day of July, A. D. 1877, caused this deed to be signed by its vice-president and secretary and attached thereto its corporate seal.

THOMAS H. WELLS, [SEAL.]
Vice-President.

[CORPORATE SEAL.] JNO. H. DYNERS, *Secretary.*

In presence of—

31 The following-named amendments were made in this indenture before its execution, viz: The word "first" substituted for the word "second," in 26th line, on first page; the words "that is for extension of main line or branches" interlined between the words "purposes" and "at," in 17th line, on sixth page; the words "letting and contracting for the" interlined between the words "actual" and "construction," in 21st line, on 6th page, and the words "or has been constructed" added after word "contract," in 24th line, on sixth page; also, the word "and" substituted for the word "or" after word "railroad," in 23d line, on 2d page.

Witnesses:
F. E. RITTMAN.
WM. S. DYNES.

THE COMMONWEALTH OF PENNSYLVANIA, }
County of Mercer, } *ss:*

This day came the Shenango and Allegheny Railroad Company, by Thomas H. Wells, its vice-president, who is well known to me to be such, and acknowledged the execution, signing, and sealing of the foregoing instrument to be its free act and deed for the purposes therein mentioned; and the said Thomas H. Wells acknowledged that he did, as such vice-president, duly sign, seal, execute,
32 and deliver the foregoing instrument, and that the same is his free act and deed, and that he is still satisfied therewith.

This 21st day of September, A. D. 1877.

E. E. MILLER, *J. P.*

33 *Bill of Complaint. Filed May* 1, 1884.

Circuit Court of the United States, Western Dist. of Penna. May T., 1884.

JOHN H. DEVEREUX, Trustee,
vs.
THE SHENANGO & ALLEGHENY R. R. Co., &c. } No. 25.

Dunning, Edsall & Hart, solicitors for plaintiff, No. 67 Wall street, New York.

34 In the Circuit Court of the United States, Western District of Pennsylvania. — Term, 1884. In Equity.

JOHN H. DEVEREUX, as Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. —.

The answer of The Shenango and Allegheny Railroad Company the defendant above named, to the bill of complaint of John H Devereux, trustee, respectfully showeth as follows:

First: This respondent admits the facts set forth in the first, second, third, fourth, and fifth paragraphs of plaintiff's bill.

Second. This respondent admits the averments contained in the sixth paragraph of plaintiff's bill, with the following exceptions, to wit: The bonds outstanding in addition to the $200,000 issued in 1877 amount to $207,000, instead of $175,000, and said $207,000 of bonds are held as collateral security for obligation of defendant company by [the] following persons:

First National Bank, Cleveland	$64,000
Second National Bank, Erie	42,000
Wick Bros. & Co.	18,000
35 J. T. Blair	5,000
First National Bank, Greenville	37,000
J. H. Wells, Youngstown	11,000
Morton, Bliss & Co.	50,000
	$207,000

Third. This respondent further admits the averments contained in paragraphs seven and eight of complainant's bill.

Fourth. This respondent further admits the averments contained in the ninth paragraph of complainant's bill, but shows to this honorable court that a part of said indebtedness has been paid by Thomas P. Fowler, receiver of this court, whose appointment is hereinafter more fully set forth, out of the earnings of the railroad of defendant company and with moneys borrowed on receivers' certificates, as authorized by the decree of this court.

Fifth. This respondent denies that the net revenues of defendant company will continue to be inadequate to pay the interest due and to grow due thereon, as alleged in the tenth paragraph of complainant's bill.

Sixth. This respondent, in answer to the remaining averments in the tenth paragraph and to the averments contained in the eleventh paragraph of complainant's bill, respectfully shows that a bill in equity by Charles L. Young and Henry W. Tyler against this
36 respondent was presented to this honorable court on March 15, 1884, praying, among other things, that a receiver should be appointed to take possession of all and singular the property of said respondent, The Shenango and Allegheny Railroad Company, and that the said property should be administered and justly and equitably applied towards the payment of the debts of this defendant company, and upon a hearing thereof this honorable court on March 15, 1884, appointed Thomas Powell Fowler, Esq., receiver of all the property and estate of said respondent; to which bill in equity, filed at No. 17 May term, 1884, and the several decrees and reports made and petitions and answers filed in said cause, your respondent prays leave to refer as occasion may require.

THE SHENANGO & ALLEGHENY R. R. CO.,
By J. T. BLAIR, *President.*

37 STATE OF PENNSYLVANIA, }
County of Mercer, } *ss.:*

James T. Blair, being duly sworn, says that he is president of the above-named corporation, The Shenango and Allegheny Railroad Company, and that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and so far as the same are stated on information and belief are believed by him to be true.

J. T. BLAIR.

Subscribed and sworn to before me this 24th day of June, A. D. 1885.

[SEAL.] E. S. TEMPLETON,
Notary Public.

38 *Answer of Defendant. Filed June 26, 1885.*

Circuit Court of the U. S., Western Dist. of Penna. May T., 1884.

JOHN H. DEVEREUX, as Trustee,
vs.
THE SHENANGO AND ALLEGHENY R. R. Co. } No. 25.

39 To the judges of the circuit court of the United States for the western district of Pennsylvania, in the third circuit:

John H. Devereux, a citizen of Ohio, residing in the city of Cleveland, in that State, as trustee, brings this his amended bill against the Shenango and Allegheny Railroad Company, a corporation, citizen of Pennsylvania; Henry Rawle, trustee, a citizen of the State of Pennsylvania; Thomas P. Fowler, receiver of the said The Shenango and Allegheny Railroad Company, a citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a corporation and citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a corporation and citizen of the Kingdom of Great Britain, and William A. Adams, a citizen of the Kingdom of Great Britain; and thereupon your orator complains and shows as follows:

First. During the times hereinafter mentioned the defendant, The Shenango and Allegheny Railroad Company, was, and it still is, a corporation incorporated, organized, and existing under the laws of Pennsylvania, and engaged in maintaining and operating a railroad in said State.

Second. On or about the first day of July, A. D. 1877, the said defendant, The Shenango and Allegheny Railroad Company, duly executed and delivered to your orator a deed of trust in due form of law, wherein and whereby the said company, for the

40 purpose of securing the payment of its certain bonds and coupons therein mentioned, did grant, bargain, and sell to your orator, as trustee, the entire railroad built and to be built of the said Shenango and Allegheny Railroad Company, from its junction with the Atlantic and Great Western railroad, near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley railroad, on the east side of the Allegheny river, together with all its branches, extensions, side tracks, switches, and turn-outs, built and to be built; and also all the lands, rights, franchises, and appurtenances thereunto belonging, and also all engines, locomotives, cars, tools, machinery, rolling-stock, supplies, and personal and real property of every name and nature connected with or belonging to the said company on or along its said railroad and used by it in operating its said railroad, whether said property was then in existence or should thereafter be built or constructed, or whether said property had then been acquired by the said company or should be thereafter acquired by the said company, and also all the corporate rights and franchises of said railroad company.

A copy of said deed of trust is annexed hereto, marked Schedule A, and made a part of this bill, and your orator prays leave to refer thereto from time to time as occasion may require.

It is further provided by the terms of said deed of trust that it should be subject to a previous mortgage on forty miles
41 of the northwestern end of the said railroad of the Shenango and Allegheny Railroad Company and its appurtenances, which mortgage had been executed to Henry Rawle, trustee (one of the defendants hereto), to secure the payment of the bonds of said company to the amount of one million of dollars and the coupons thereto attached.

Third. Since the execution and delivery of said deed of trust a portion of the railway of the defendant company and its branches and extensions then remaining unbuilt or unfinished has been constructed and equipped, and has become subject to the lien of said trust deed, as your orator is informed and believes.

And your orator further shows that said deed of trust is a first lien upon all the main line of road of the defendant, The Shenango and Allegheny Railroad Company, excepting only forty miles of said main line extending southeasterly from its junction with the Erie and Pittsburgh railroad at Shenango, and is a first lien upon all the lateral branches of said road. The part of said main line and the lateral branches upon which said deed of trust is a first lien are about thirty-five miles in length. The whole line of the said railroad, including branches, is about seventy-five miles in length.

Fourth. Said deed of trust was so as aforesaid executed and delivered to your orator to secure bonds of said company to be issued, payable to your orator or bearer, in various sums,
42 amounting in the aggregate to one million dollars, for the purposes therein set forth. The said bonds were to be payable on the first day of July, 1907, and were to draw interest at the rate of seven per centum per annum. Coupons were attached to the said bonds for the payment of the interest thereon, at the rate aforesaid, on the first days of January and July in each year until the maturity of said bonds.

Fifth. It was in and by said deed of trust provided that if at any time the said grantor should suffer and permit any of the coupons aforesaid to remain due and unpaid and in arrear for a period of eighteen months after the same should be due and payable, and after due demand of payment should be made at the place where the said coupons should be made payable, then the principal of the said bonded indebtedness should, at the option of one-tenth in amount of the holders thereof, become due and payable.

Sixth. Of the said bonds secured by the said deed of trust there were issued by the defendant company, in or about the year 1877, bonds amounting in the aggregate to the sum of $200,000, all of which are still outstanding and unpaid, and there have since been issued by said company in conformity with said deed and for purposes therein specified, and are still outstanding, additional bonds secured by the same deed of trust, amounting in the aggregate to the sum of $175,000, as your orator is informed and believes.

43 Seventh. The defendant company made default in the payment of the semi-annual interest which became due and payable on $200,000 of said bonds on the first day of January, 1878, and has

ever since suffered and permitted the coupons for said interest to remain due and unpaid and in arrear, although demand of payment thereof was duly made more than eighteen months ago at the place where the said coupons were made payable, and it is the desire of more than one-tenth in amount of the holders of all of the bonded indebtedness secured by said deed of trust, and they have elected and determined, that the principal of said bonded indebtedness shall become and be forthwith due and payable, as your orator is informed and verily believes.

Eighth. Besides the interest on said bonds so unpaid and remaining in default as aforesaid, the defendant company has also made default in the payment of other and later interest which from time to time became due and payable upon said bonds, and has suffered and permitted to remain due and unpaid and in arrear the coupons for such later interest since it accrued, to the amount of upwards of $75,000 in the aggregate, as your orator is informed and verily believes.

Ninth. The defendant company is further indebted to a large amount for wages, materials, supplies, and otherwise which it is unable to pay, as your orator is informed and believes, but to
44 what amount and the particulars thereof your orator has no exact information.

Tenth. And your orator further shows, on his information and belief, that the net revenues of said defendant company derived from the premises mortgaged to your orator in and by said trust deed, and which are its only source of income, have not only been insufficient to pay the interest on the outstanding bonds secured thereby in the past, but are and will continue to be inadequate to pay the interest due and to grow due thereon hereafter; that the net revenue and income of the mortgaged premises in equity belonged to your orator as trustee, and that under the said deed of trust he is entitled to the possession and use of said mortgaged premises, and to collect, receive, and apply the net income received therefrom for the benefit of his *cestuis que trustent*; that, owing to the financial embarrassments of the defendant company, there is imminent danger that the mortgaged premises or some part thereof may be proceeded against by its unsecured and general creditors to the damage and prejudice of your orator as such trustee, and that by reason thereof he is in danger of being subjected to great expense, trouble, and delay in protecting his rights and those of his *cestuis que trustent*, and that he is wholly without adequate remedy at law in the premises.

Eleventh. Your orator further shows to the court that disputes have arisen between the holders of bonds secured by the
45 aforesaid mortgage executed to Henry Rawle as trustee and the holders of the bonds secured by the mortgage executed to your orator and other creditors of the said railroad company as to the extent of property covered by the lien of the aforesaid mortgage to Henry Rawle, trustee, and as to the priority of said lien and as to the amount due upon the bonds secured by the same. It is claimed by the said Henry Rawle, as trustee, and by the bondholders under the mortgage given to him, that the said mortgage is a lien

upon certain portions of the said railroad in addition to the forty miles hereinbefore mentioned, the contrary whereof your orator charges to be true; and it is claimed by the said Henry Rawle, trustee, that the lien of the said mortgage is prior to all other liens upon so much of the railroad as is covered by it; whereas it is claimed by the defendant, Thomas Powell Fowler, as receiver, that the said lien is subject to and is to be postponed to the amount due upon receivers' certificates issued by order of the court, and to the costs, charges, and expenses incurred and to be incurred in the cause wherein the said receiver was appointed; and it is further claimed by the said Henry Rawle, as trustee, and by the bondholders under the mortgage given to him, that the whole amount of the said bonds and of the overdue coupons thereon is justly due and payable, the contrary whereof your orator, on information and belief, charges to be true, and avers that very much less than the face value of
46 the said bonds (but the precise amount your orator is not able with certainty to state) is due thereon; and your orator further shows that it is claimed by the bondholders under the mortgage given to the said Henry Rawle, as trustee, that the said bonds are held by them in good faith and for full value, whereas it is claimed by the said Shenango and Allegheny Railroad Company, and by the holders of bonds secured by the mortgage wherein your orator is trustee, and by other creditors of the said company, that many of the said bonds secured by the said mortgage to Henry Rawle, as trustee, were fraudulently issued to the present holders thereof, then being officers or directors of the said company, at a rate less than par, and that the said bonds were accompanied by certain collateral securities, to wit, the stock of the Mercer Mining and Manufacturing Company, which (or the proceeds of which) are still held by the said bondholders, and the proceeds or value whereof should, in equity, be applied to the further reduction of the said debt.

Wherefore your orator shows to the court that the extent of the property covered by the said mortgage to Henry Rawle, trustee, the priority of the lien of the said mortgage thereon, and the amount due upon the bonds secured by the same are each and all undetermined and in dispute, and that no advantageous or just sale of the said railroad property could be made subject to the said mortgage, inasmuch as the purchaser or purchasers at said sale would not, with certainty, be able to know precisely what property would be
47 acquired by them, or what liens, if any, might exist upon the same in their hands, but that the said railroad property should be sold free and discharged from the lien of said mortgage, and so that the title to the same should be conveyed to and become vested in the purchaser discharged of and from any claim, dispute, or cloud whatsoever.

Twelfth. Your orator further shows that heretofore, to wit, on the fifteenth day of March, A. D., 1884, in a certain cause in this court, No. 17, of May term, 1884, in equity, wherein Charles L. Young and Henry W. Tyler were complainants, and the said Shenango and Allegheny Railroad Company were defendants, which

cause is still pending and undetermined, the defendant, Thomas Powell Fowler, was duly appointed receiver of the said railroad and of its franchises and property of every kind, and duly qualified as such receiver, and has continued to this date to discharge the duties of his said office; and that under and by virtue of certain orders of this court made in the said cause receivers' certificates to the amount of one hundred and thirty-five thousand dollars have been issued and are still outstanding and unpaid. It is claimed by the said receiver and the holders of the said certificates that the same are a lien upon the property of the said railroad hereinbefore mentioned, and that the same should be paid in the first instance from the proceeds of any sale of the said property; and it is further

48 claimed by the said receiver that the costs, charges, and expenses incurred by him in the management and care of said property, and all allowances made or to be made to him in respect of said care and management, are likewise a first lien upon the said property and are entitled to priority over all other liens whatsoever.

And your orator further shows that the defendants, The Bristol and South Wales Railway Wagon Company (Limited), The Union Rolling Stock Company (Limited), and William A. Adams, claim that a large sum of money, to wit, over thirty thousand dollars, is due them by reason and in respect of certain car-trust contracts, and that it is expedient that if any sale of the locomotives, cars, or equipment of the said railroad is to be made the rights of the said last-mentioned defendants in the premises should be ascertained, or that the purchaser at said sale should take title free and discharged from said claims.

Thirteenth. Your orator further shows that, by reason of his being engaged in the operation and management of an extensive railroad system in other States, it is impracticable for him, as such trustee, to take the possession of the mortgaged premises, and to use and operate the same, and conduct its business under the provisions of the said deed of trust; and that the appointment of a receiver by this honorable court, competent to take possession of said premises and operate the same during the pendency of this action, will be

49 [to] the benefit and advantage of your orator and his *cestuis que trustent*, and of all others interested therein.

Wherefore your orator prays judgment against the defendant company that an accounting may be had and taken in the premises of the amount of bonds outstanding and secured by the aforesaid deed of trust to the complainant; that the whole amount of said bonds, both principal and interest, may be adjudged to have become due and payable according to the terms of said deed of trust; that the amount due upon the bonds secured by the said mortgage executed to Henry Rawle, trustee, and the amount due upon said receiver's (Thomas P. Fowler's), certificates, and the amounts due for the costs, charges, and allowances of said receiver, and in the cause wherein he was appointed, and the amounts due under said car-trust contracts, be each and all ascertained and declared; and the respective priorities of all the incumbrances and charges upon the said property, or any part thereof, or upon the proceeds of the same,

[be] settled and determined; that the mortgaged premises be sold, under direction of this honorable court, free, clear, and discharged from all the liens, claims, and demands whatsoever in this bill mentioned, or which may exist or be made for the satisfaction of the amount which may be found to be due to your orator as such trustee, and that meantime a receiver may be appointed to take possession of all and singular the mortgaged premises, to use and operate the same and conduct its business, and to collect and re-
50 ceive the rents, profits, and income thereof for the benefit and advantage of your orator and his *cestuis que trustent* under said deed of trust, with proper directions as to an accounting and the application thereof from time to time pending this action, and that your orator may have such other and further relief in the premises as to the court may seem just and proper.

May it please this honorable court to grant to your orator a writ of subpœna directed to the said The Shenango and Allegheny Railroad Company—Henry Rawle, trustee; Thomas P. Fowler, receiver—The Bristol and South Wales Railway Wagon Company (Limited), The Union Rolling Stock Company (Limited), and William A. Adams, commanding them and each of them, at a certain day and under a certain penalty to be therein inserted, to be and appear before this honorable court, then and there to answer the premises and to stand and abide such order and decree therein as to this honorable court shall seem agreeable in equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

DUNNING & EDSALL,
Solicitors for Complainant, John H. Devereux

STATE OF NEW YORK, }
City & County of New York, } *ss:*

John H. Devereux, being duly sworn according to law, deposes
51 and says that the facts set forth in the foregoing amended bill, so far as the same are stated of this deponent's knowledge, are true, and so far as the same are stated on information and belief are believed by him to be true.

JOHN N. DEVEREUX.

Sworn to and subscribed before me, a notary public in and for said city & county, this third day of September, A. D. 1885.

[SEAL.] W. F. DUNNING,
Notary Public, N. Y. Co.

52 SCHEDULE A.

This indenture, made this first day of July, one thousand eight hundred and seventy-seven, between the Shenango and Allegheny Railroad Company, a corporation duly incorporated and organized under the laws of the Commonwealth of Pennsylvania, of the one part, and John H. Devereux, of the city of Cleveland, Cuyahoga county, in the State of Ohio, trustee, for the purposes hereinafter named, of the second part, —:

Whereas the said Shenango and Allegheny Railroad Company has agreed to issue its bonds, payable to the said trustee or bearer, in various sums, amounting in the aggregate to one million dollars, which bonds are to be issued for the purpose of paying an indebtedness of the said railroad company to H. Wallaston Blake and George Herring, trustees, incurred on account of the construction of a part of its railroad, and the remainder of said bonds are to be issued for the purpose of meeting and covering the cost of constructing and extending its railroad from the present terminus thereof, at or near Hilliard's mills, to or near the town of Petrolia, in Butler county, State of Pennsylvania, and from thence to its contemplated junction with the Allegheny Valley railroad, on the east side of the Allegheny river, in said State, being a distance of about twenty-two miles; and the said bonds, or a portion thereof, are also to be issued for the purpose of constructing any branch or branches leading from and connecting with the main line of the company's
53 railroad, and also for the purpose of building side tracks, switches, depots, stations, and purchasing the necessary rolling-stock and equipment for the successful operation of said railroad. The said bonds are to be payable on the first day of July, one thousand nine hundred and seven, and are to draw interest at the rate of seven per centum per annum. Coupons are attached to the said bonds for the payment of the interest thereon at the rate aforesaid, on the first days of January and July in each year, until the maturity of the said bonds. The said bonds are numbered and are of the respective amounts, as follows, to wit: Seven hundred and fifty bonds of one thousand — one hundred and one to one thousand eight hundred and fifty, inclusive; four hundred and eighty bonds of five hundred dollars each, and numbered from one thousand eight hundred and fifty-one to two thousand three hundred and thirty, inclusive; and one hundred bonds of one hundred dollars each, and numbered from two thousand three hundred and thirty-one to two thousand four hundred and thirty, inclusive. Now, for the purpose of securing the payment of the bonds and coupons aforesaid, this indenture witnesseth: That the said Shenango and Allegheny Railroad Company, in consideration of the premises aforesaid and of one dollar, paid by the said John H. Devereux, trustee, has granted, bargained, and sold, and by these presents does grant, bargain, and sell, to the said John H. Devereux, trustee as aforesaid, and his successor or successors in the aforesaid
54 trust, the entire railroad built, and to be built, of the said Shenango and Allegheny Railroad Company from its junction with the Atlantic and Great Western railroad, near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley railroad, on the east side of the Allegheny river, together with all its branches, extensions, side tracks, switches, and turn-outs, built and to be built, and also all the lands, rights, franchises, and appurtenances thereunto belonging; and also all the engines, locomotives, cars, tools, machinery, rolling-stock, supplies, and personal and real property of every name and nature connected with or belonging to the said company on or along its said railroad and used by it in

operating its said railroad, whether said property is now in existence or shall hereafter be built or constructed, and whether said property has now been acquired by the said company, or shall be hereafter acquired by the said company; and also all the corporate rights and franchises of said railroad company.

This indenture, however, is subject to a previous mortgage on forty miles of the northwestern end of the railroad aforesaid and its appurtenances, executed to Henry Rawle, trustee, to secure the payment of the bonds of the company to the amount of one million dollars and the coupons thereto attached, which mortgage has been duly recorded in the counties of Mercer and Butler aforesaid: To have and to hold the said railroad and the lands, rights,
55 franchises, and privileges aforesaid, together with the engines, locomotives, cars, rolling-stock, and all the real and personal property above mentioned now owned by the said railroad company, and which it may hereafter acquire, and which in any way appertains to the same, to him, the said John H. Devereux, trustee as aforesaid, and his successor or successors in office, forever, upon the trust, terms, and conditions following: that is to say: First, for the security of the bonds and interest thereon above mentioned; and if the interest on the bonds so to be issued shall not be paid by the party of the first part when the same shall fall due, and if such interest shall remain in arrear for thirty days after due and demand of payment, or if there shall be a failure to pay the principal of said bonds, or any of them, or any part thereof, when due and demandable, according to the tenor and effect thereof, then, in either case, it shall be lawful for the said trustee or his successor or successors in office, to take possession of all and singular the railroad, rolling-stock, real and personal property, and premises aforesaid conveyed or transferred or expressed, or intended so to be, and to cause the said railroad to be used and operated and its business conducted by the said trustee and such agents, managers, and servants as he, his successor or successors, may appoint, and to apply the net income received therefrom to the payment, first, of the interest of said bonds and the surplus to the payment of the principal thereof, and at any time after default shall be made in the pay-
56 ment of the principal and interest above mentioned, or any part thereof, for the period of thirty days after due and payment duly demanded upon the request of the holders of twenty-five thousand dollars in amount of said bonds or coupons, said John H. Devereux, trustee, his successor or successors in office, or whoever may then be trustee or trustees under this indenture, may and shall enter upon each and take possession of all and singular the said premises hereby conveyed and transferred or expressed or intended so to be, and shall hold possession of the same and use and operate the same and apply the net income therefrom, after paying all costs and expenses and a reasonable compensation to the said trustee, his successor or successors, to the payment of the interest and principal aforesaid; and if at any time the said grantor shall suffer and permit any of the coupons aforesaid to remain due and unpaid and in arrears for a period of eighteen months after the same

shall be due and payable and after due demand of payment shall be made at the place where the said coupons are payable, then the principal of the said bonded indebtedness shall, at the option of one-tenth in amount of the holders thereof, become due and payable, and the holder or holders thereof, in the name of the trustee aforesaid, his successor or successors in office, may maintain an action at law or in equity to recover the amount of the bonds and the accrued interest thereon then outstanding as aforesaid, and upon the
57 fact being judicially ascertained by the judgment of any court of competent jurisdiction that the grantor has thus been in default of the payment of any of the coupons aforesaid for the period of eighteen months or more, the said John H. Devereux, trustee, or his successor or successors in office, shall, at the request of any of the holders of said bonds, proceed to foreclose this mortgage in accordance with the practice of the courts having jurisdiction thereof in the State of Pennsylvania or in the circuit court of the United States of the proper district; and in the meantime the said John H. Devereux, trustee, and his successor or successors in office, shall be entitled, after default in the payment of any of the coupons aforesaid for the period of thirty days, to the possession, income, and use of the above mortgaged real and personal property, and each and every part thereof, and shall be entitled, after the payment of the costs and expenses and charges as aforesaid, to apply the net revenue or income thereof to the payment of any accrued interest or indebtedness accrued by the said mortgage and remaining unpaid; and whenever, by reason of any default aforesaid, the said John H. Devereux, as trustee, his successor or successors in office, would be required or entitled to proceed to foreclose said mortgage upon the ground that the principal of said bonds has fallen due, then, and in such a case the said trustee, or whoever may then be trustee, may, at his option, upon giving notice in writing to the board of
58 directors of the said company (which notice shall be served upon the president, secretary, or other acting officer of said company), and publishing notices in one or more newspapers published in the cities of New York, Pittsburgh and Cleveland, for the period of sixty days, of his intention to do so, proceed to sell at public auction, at the junction of said railroad of said company with the Atlantic and Great Western railroad, near Greenville aforesaid, the entire real and personal property above mortgaged, and may execute to the purchaser a full, complete, and legal conveyance of all and singular the mortgaged premises aforesaid, or which may be sold by him or them as aforesaid, and from the proceeds of said sale, or of the operation of said railroad until sold, after deducting just allowances for the services of said trustee or trustees and his or their expenses; and said trustee, his successor or successors in office, shall pay, first, the interest in arrear of said bonds, and then the principal thereof in full, or ratably, so far as such proceeds or income shall suffice for all charges and expenses of operating and maintaining said road and the management of the said business. The said trustee, his successor or successors in office, shall be indemnified out of the proceeds of the sale of said road, if needful, as well as out of

income thereof. In case any surplus shall remain in the hands of the trustee, or his successor or successors in office, the same shall be paid over to the party of the first part, its successors or assigns; but it is distinctly understood and agreed that if the said party of
59 the first part shall well and truly pay the interest on the said bonds to be issued as the same shall fall due and be demanded, and also the principal thereof when the same shall fall due, and shall well and truly perform all the other covenants and conditions of said bonds, then the estate, title, and interest of the party of the second part, his successor or successors in office and in this trust, shall cease and determine and become void, but otherwise shall remain in full force and virtue in law.

It is agreed between the parties hereto that after the issue and delivery to the said Blake and Herring, trustees as aforesaid, of two hundred thousand dollars of the bonds aforesaid, that none of the above bonds shall be issued by the party of the first part, except for the purpose of extending and constructing its railroad from its present terminus to or near the town of Petrolia aforesaid, or to the Allegheny river, or for the purpose of constructing such branch or branches as its board of directors may deem necessary and proper to construct, or for the purpose of purchasing the necessary rolling-stock and equipments for its said railroad, and for the purpose of constructing necessary switches and turn-outs, and in no event shall any of the said bonds be issued for the purposes of construction of branches, or extension of the main line at a greater rate than twenty-five thousand dollars per mile for each mile of railroad of a good and substantial character which said railroad com-
60 pany may construct, and the said trustee is hereby prohibited from certifying to any of the said bonds to be issued for such construction purposes—that is, for extension of main line or branches at a greater rate than twenty-five thousand dollars per mile for such railroad as said company may actually construct; and it is hereby made the duty of said trustee to see that no bonds are allowed to be issued or are certified by him for such construction purposes until the actual letting and contracting for the construction of the proposed branch, branches, or extension, and then only as the work progresses and upon the certificate of the chief engineer of said road that the work is under contract or has been constructed. Nothing herein contained shall require said railroad company to construct more than one mile of the said road at any one time in order to entitle said railroad company to issue and sell twenty-five thousand dollars of the above-mentioned bonds. It is further agreed that if any of the aforesaid bonds shall be sold or required by the said railroad company for the purpose of providing rolling-stock for the use of said railroad or constructing switches, side tracks, or turn-outs, that before the trustee or trustees shall certify to the same it shall be necessary for the said railroad company to state to the said trustee, in writing, what rolling-stock, switches, side tracks, or turn-outs its board of directors desire to purchase or construct, and the estimated cost thereof, and the said trustee, upon receiving such certifi-
61 cate from the board of directors of the first party, and being

satisfied that the money will be applied in good faith for the purpose of buying rolling-stock or constructing said tracks and switches or turn-outs, shall certify to a sufficient amount of the above-mentioned bonds to enable the officers of the said railroad company, from the proceeds thereof, to purchase the rolling-stock and construct switches and side tracks and turn-outs so specified, and he shall, from time to time, upon like application, certify bonds to be sold or used for the purpose of buying rolling-stock for the equipment of said road and constructing switches, side tracks, and turn-outs as aforesaid. It is further understood and agreed that the said grantor will, during the existence of this mortgage, keep up and maintain its said railroad and equipment in its present good condition, and that it will, from time to time, make all such needful repairs, additions, and improvements in its roadway, stations, depots, shops, rolling-stock, and equipment as good and efficient railroad management may require, and that all disputes and questions, if any, under this paragraph between the trustee or trustees and said grantors shall be settled by three competent engineers, one to be chosen by each party, and the third by the two thus chosen, and the decision of a majority of them shall be conclusive and binding, and the grantor shall at once make the improvements or repairs so agreed upon or required, and upon failure to do so within the time and in the manner required by said referees
62 the said trustee or the trustees shall be at liberty to take possession of said railroad and make such repairs or improvements, and to defray the expense of such repairs or improvements from the income of said railroad. In case the trustee herein mentioned shall die or resign, or be removed, his successor or successors in the trust shall be appointed by the grantor and the holders of the outstanding bonds secured by this mortgage by mutual agreement, and if they shall be unable to agree, then the court of common pleas of Mercer county, Pennsylvania, shall appoint some suitable trustee; but said court shall not make any such appointment until the holders of at least two hundred thousand dollars in amount of said bonds shall be notified and have a reasonable time to attend before said court and be heard in regard to such appointment.

In testimony whereof the said grantor, The Shenango and Allegheny Railroad Company, hath, on this first day of July, A. D. 1877, caused this deed to be signed by its vice-president and secretary, and attached thereto its corporate seal.

[CORPORATE SEAL.] THOMAS H. WELLS, [SEAL]
Vice-President.
JNO. H. DYNES, *Secretary.*

63 In presence of—

The following-named amendments were made in this indenture before its execution, viz, the word "first" substituted for the word "second," in 26th line, on first page; the words "that is for extension or main line or branches" interlined between the words "purposes" and "at," in 17th line, on 6th page; the words "letting and

contracting for the" interlined between the words "actual" and "construction," in 21st line, on sixth page; and the words "or has been constructed" added after word "contract," in 24th line, on sixth page; also the word "and" substituted for the word "or," after word "railroad," in 23d line, on second page.

F. E. RITTMAN,
WM. S. DYNES,
Witnesses.

64 THE COMMONWEALTH OF PENNSYLVANIA, }
County of Mercer, } *ss:*

This day came The Shenango and Allegheny Railroad Company, by Thomas H. Wells, its vice-president, who is well known to me to be such, and acknowledged the execution, signing, and sealing of the foregoing instrument to be its free act and deed for the purposes therein mentioned; and the said Thomas H. Wells acknowledged that he did, as such vice-president, duly sign, seal, execute, and deliver the foregoing instrument, and that the same is his free act and deed, and that he is still satisfied therewith.

This 21st day of September, A. D. 1866.

E. E. MILLER, *J. P.*

And now, Sept. 5th, 1885, on motion of Dunning and Edsall, plaintiff's attorneys, and with consent of E. S. Templeton, attorney for the Shenango and Allegheny Railroad Company, it is ordered that the complainant be, and is hereby, permitted to amend his bill in this case by filing the within amended bill of complaint, and that process be awarded against the new parties defendant within named.

By the court:

65 *Amended Bill in Equity.*

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN H. DEVEREUX, a Citizen of Ohio, residing in the City of Cleveland, in that State, as Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain. } No. 25.

Vide order within.

DUNNING & EDSALL,
For Plaintiff.

Filed Sept. 5, 1885.

65b *Answer of the Bristol & South Wales Railway Wagon Company (Limited), The Union Rolling Stock Company (Limited), and William A. Adams to Amended Bill of Complaint.*

In the Circuit Court of the United States for the Western District of Pennsylvania, in the Third Circuit. In Equity.

JOHN H. DEVEREUX, a Citizen of Ohio, residing in the City of Cleveland, in that State, as Trustee,

against

SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company (Limited), a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company (Limited), a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain.

65c The joint and several answers of the defendants, The Bristol and South Wales Railway Wagon Company (Limited), a corporation and citizen of the Kingdom of Great Britain; The Union Rolling Stock Company (Limited), a corporation and citizen of the Kingdom of Great Britain, and William A. Adams, a citizen of the Kingdom of Great Britain, to the amended bill of complaint of John H. Devereux, a citizen of Ohio, residing in the city of Cleveland, in that State, as trustee, plaintiff.

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's amended bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them, or any of them, to make answer to, they, these defendants, severally answering, say:

First. They admit each and every allegation contained in the first paragraph of the said amended bill of complaint.

Second. They have no personal knowledge of the facts alleged in the second paragraph of said amended bill of complaint, but for the purposes of this suit they admit said facts; and for greater certainty therein crave leave to refer to the said deed of trust when produced.

65d Third. They do not know and cannot set forth, as to their belief or otherwise, whether or not it is as alleged or the facts are as stated in paragraph third of said amended bill of complaint.

Fourth. They have no personal knowledge of the facts, but for the purposes of this suit they admit each and every allegation con-

tained in paragraph fourth of said amended bill of complaint, and for greater certainty therein crave leave to refer to the said deed of trust and said bonds when produced.

Fifth. They admit each and every allegation contained in paragraph fifth of said amended bill of complaint, but for greater certainty therein crave leave to refer to the said deed of trust when produced.

Sixth. They do not know and cannot set forth, as to their belief or otherwise, whether or not it is [as] alleged or the facts are so stated in paragraph sixth of said amended bill of complaint.

Seventh. They do not know and cannot set forth, as to their belief or otherwise, whether or not it is as alleged or the facts are as stated in paragraph seventh of said amended bill of complaint.

Eighth. They do not know and cannot set forth, as to their belief or otherwise, whether or not it is as alleged or the facts are as
65e stated in paragraph eighth of said amended bill of complaint.

Ninth. They admit each and every allegation contained in paragraph ninth of said amended bill of complaint, but show to this honorable court that a part of said indebtedness has been paid by the defendant, Thomas P. Fowler, receiver of this court, whose appointment is hereinafter more fully set forth, out of the earnings of the railroad of the defendant, The Shenango and Allegheny Railroad Company, and with moneys borrowed on receivers' certificates, as authorized by the decree of this court.

Tenth. They believe the allegations contained in paragraph tenth of said amended bill of complaint "that the net revenues of said defendant company, derived from the premises mortgaged to your orator in and by said trust deed, and which are its only source of income, have not only been insufficient to pay the interest on the outstanding bonds secured thereby in the past, but are and will continue to be inadequate to pay the interest due and to grow due thereon hereafter," but as to the remaining allegations of said paragraph they do not know and cannot set forth, as to their belief or otherwise, whether or not it is as alleged or the facts are as stated therein.

Eleventh. They do not know and cannot set forth, as to their belief or otherwise, whether or not it is as alleged or is the fact as set forth in paragraph eleventh of said amended bill of com-
65f plaint.

Twelfth. These defendants admit each and every allegation contained in paragraph twelfth of said amended bill of complaint, except that these defendants do not know and cannot set forth, as to their belief or otherwise, whether or not it is as alleged or is the fact that the said receivers' certificates referred to in said paragraph twelfth amounted to the sum of $135,000; and these defendants further pray leave to refer, as occasion may require, to the bill in equity filed in the said certain cause in this court, No. 17 of May term, 1884, and the several decrees and reports made and petitions and answers filed in said cause.

Thirteenth. They do not know and cannot set forth, as to their

Fourteenth. These defendants claim to be interested in the matters of this suit by virtue of three several contracts between the defendant, The Shenango and Allegheny Railroad Company, and these defendants, being in the form ordinarily known as car-trust leases.

These defendants, further answering, say:

Fifteenth. That on or about the first day of August, 1880,
65*g* the said defendants and the defendant railroad company entered into a certain contract in writing, under their respective seals, in and by which said contract the said defendants leased to the defendant railroad company and the said defendant railroad company hired from the said defendants certain railway rolling-stock, commonly known as gondola coal cars, and so described in said contract; that the number of said cars was fifty-six (56); that the said tenancy was by the terms of said contract to commence on the first day of September, 1880, and to end on the first day of September, 1885; that the said defendant railroad company, in and by said contract, agreed to pay to the said defendants a monthly rental for each of said cars of seven dollars and sixty-five cents, payable on the first days of each month during the continuance of said tenancy, and the sum of forty dollars for each of the said cars upon the first day of September, 1880.

Sixteenth. That on or about the first day of December, 1880, the said defendants and the defendant railroad company entered into a certain contract in writing, under their respective seals, in and by which said contract the said defendants leased to the defendant railroad company and the said defendant railroad company hired from the said defendants certain railway rolling-stock, commonly known as gondola coal cars, and so described in said contract; that the number of said cars was fifty (50); that the said tenancy
65*h* was by the terms of said contract to commence on the first day of February, 1881, and to end on the first day of February, 1886; that the said defendant railroad company in and by said contract agreed to pay to the said defendant a monthly rental for each of said cars of seven dollars and sixty-five cents, payable on the first days of each month during the continuance of said tenancy, and the sum of forty dollars for each of the said cars upon the first day of February, 1881.

Seventeenth. That on or about the 20th day of January, 1882, the said defendants and the defendant railroad company entered into a certain contract in writing, under their respective seals, in and by which said contract the said defendants leased to the defendant railroad company and the said defendant railroad company hired from the said defendants certain railway rolling-stock commonly known as gondola coal cars, and so described in said contract; that the number of said cars was fifty (50); that the said tenancy was by the terms of said contract to commence on the first day of March, 1882, and to end on the first day of March, 1887; that the said defendant railroad company in and by said contract agreed to pay to the said defendants a monthly rental for each of said cars of eight dollars and sixty-one cents, payable on the first days of each month

belief or otherwise, whether or not it is as alleged or the facts are as stated in paragraph thirteenth of said amended bill of complaint.

during the continuance of said tenancy, and the sum of forty-five dollars for each of the said cars upon the first day of March, 1882.

65*i* Eighteenth. That, in accordance with said contracts of lease, these defendants delivered the said gondola coal cars to the said defendant railroad company, and the said railroad company made the first payments of forty dollars and forty-five dollars on each car, respectively, as required by the several contracts, and paid the regular monthly rentals, as reserved in the said contracts, up to and including the rentals which fell due upon the first day of March, 1883, but that after date no rentals whatever were paid, except as hereafter stated.

That on the 15th day of March, 1884, by an order made by this court in the said cause No. 17, May term, 1884, this rolling-stock was taken possession of by said Thomas Powell Fowler, Esq., and the said contracts recognized, reaffirmed, and adopted by said receiver, and that since that time the said rolling-stock has been in the possession of the said receiver and operated by him for the benefit of the said road.

That the said receiver has always since his appointment promised from month to month to pay the rentals of these cars, as provided in said contracts, but that he has utterly failed to do so, and has never paid anything whatever upon the three contracts of lease or otherwise for the use of the said rolling-stock, except the payment of one month's rental upon each of the three contracts, amounting in the aggregate to $1,241.40, on or about the 29th day of July, 1884, and the sum of $16.54 and interest upon the 10th day of October, 1884, and the further sum of $625, paid on or about the 12th day

65*j* of November, 1884.

That the said receiver has always represented to these defendants that this rolling-stock was necessary for the efficient operation of the said railroad, and that it was actually earning for the said railroad a large part of the rentals reserved in the said three contracts of lease.

These defendants, further answering, show that both prior to the appointment of the receiver and subsequent thereto the said rolling-stock belonged to these defendants, was used first by the corporation and subsequently by the receiver, and that practically it was the only means whereby the said railroad company was enabled to make any money whatever; that almost the only efficient freight cars in the use of the said railroad company are and have been the cars of these defendants.

These defendants, further answering, show that they are informed and believe that the earnings of these cars, instead of being paid over to these defendants, as they should have been, were diverted to the payment of the interest upon the first-mortgage bonds, which interest was not earned by the said railroad, so that the first-mortgage

bondholders have directly received large sums of money which were really due and payable to these defendants.

And these defendants, further answering, show that their rolling-stock aforesaid is being worn out in the service of the said
65*k* railroad company and of its receiver, and that there is already due a sum of money amounting to more than $30,000 upon the said three contracts of lease, and that the said receiver has refused and still refuses to pay any part of the same to these defendants.

And these defendants, further answering, show that upon a presentation of the preceding facts to this honorable court by petition filed on the 23d of May, 1885, these defendants were permitted to intervene in said cause, No. 17, May term, 1884, and on the 5th day of June, 1885, by an order of this honorable court, it was referred to T. De Witt Cuyler, Esq., of the city of Philadelphia, as special master, to ascertain and report without delay to this court the sum due from the Shenango and Allegheny Railroad Company upon the said three contracts of lease, and if any sum be found by him to be due from the said railroad company that he further report how such payment should be made.

That the said special master has already held several sessions, and these defendants have put in their proofs and have rested; that the said Henry Rawle, the said receiver, and certain creditors of said railroad company have appeared before the said master, by their solicitors, and have cross-examined the witness produced by these defendants, and have examined witnesses in their own behalf, and that said reference to said master is still pending and undetermined.

And these defendants deny that there is any other matter,
65*l* cause, or thing in the said complainant's said amended bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, — is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct.

Wherefore these defendants pray your honorable court—

I. That you will not authorize or permit the said mortgaged premises to be sold under any of the said mortgages until the rights of these defendants shall have been ascertained, declared, and satisfied.

II. That the amounts due under said car-trust contracts be each and all ascertained and declared and satisfied and paid, or that the amounts so ascertained and determined be declared to be a lien upon the property of the said railroad company or upon the proceeds of any sale herein prior to the liens of the said mortgages and prior to all other claims against the said company or the receiver thereof, and that the same be paid in the first instance from the proceeds of any sale of the said property or any part thereof.

III. That these defendants may have such further or other relief as the nature of the case may require, together with their
65*m* costs of this suit.

BRISTOL & SOUTH WALES RAILWAY WAGON COMPANY, LIMITED,
By OLIVER ADAMS, *Agent.*
UNION ROLLING STOCK COMPANY, LIMITED,
By OLIVER ADAMS, *Agent.*
WILLIAM A. ADAMS,
By OLIVER ADAMS, *Agent.*

DAVIES, COLE & RAPALLO,
Solicitors and Counsel for the Defendants, The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and William A. Adams, 32 Nassau Street, New York City.

65*n* STATE OF NEW YORK,)
City and County of New York,) *ss.:*

Oliver Adams, being duly sworn, deposes and says that he is the general agent in the United States of the defendants, The Bristol and South Wales Railway Wagon Company, Limited, and The Union Rolling Stock Company, Limited, and William A. Adams; that the said defendant corporations are corporations created by and existing under the laws of the Kingdom of Great Britain; that he has read the foregoing answer subscribed by said defendants [and] by him as agent as aforesaid, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on the information and belief of said defendant, and as to those matters he verily believes it to be true; that the reason why the verification is not made by said defendant corporations is that they are foreign corporations, and that all their officers reside in the Kingdom of Great Britain and not within the United States, and the reason why this verification is not made by said individual defendant is that said defendant resides in the Kingdom of Great Britain and is not within the United States. Deponent further says that by reason of his said office as general agent of said defendants he has acquired and possesses particular knowledge of the matters stated in said answer, and has possession of the contracts of lease therein named.

OLIVER ADAMS.

65*o* Subscribed and sworn to before me this 6th day of November, 1885.

DONALD B. TOUCEY,
Notary Public, New York County, N. Y.

STATE OF NEW YORK,)
City and County of New York,) *ss.:*

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for said city and county, the same

being a court of record, do hereby certify that Donald D. Toucey, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State, and for general purposes; and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 7th day of November, 1885.

[SEAL.] PATRICK KEENAN, *Clerk.*

65p *Answer of the Defendants, The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and William A. Adams, to the Amended Bill of Complaint. Filed November 9th, 1885.*

In the Circuit Court of the United States for the Western District of Pennsylvania, in the Third Circuit. May Term, 1884. In Equity.

JOHN H. DEVEREUX, a Citizen of Ohio, residing in the City of Cleveland, in that State, as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain. } No. 25

Davies, Colé & Rapallo, solicitors for defendants, The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and William A. Adams, 32 Nassau street, New York.

66 Circuit Court of the United States for the Western District of Pennsylvania. In the Third Circuit.

JOHN H. DEVEREUX, a Citizen of Ohio, residing in the City of Cleveland, in that State, as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY & Others, Including The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and William A. Adams.

The replication of John H. Devereux, the above-named complainant, to the answer of The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and William A. Adams, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantage of exception which may be had and taken to the manifold insuffi-
67 ciencies of the said answer, for replication thereto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

DUNNING & EDSALL,
68 *Solicitors for Complainant.*

Replication.

Circuit Court of the United States, Western District of Pennsylvania, Third Circuit. May Term, 1884.

JOHN H. DEVEREUX, as Trustee, &c.,
vs.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY & Others, Includ'ng The Bristol and South Wales Railway Wagon Co., Limited, The Union Rolling Stock Co., Limited, & William A. Adams. } No. 25

Dunning & Edsall, solr's for compl't.
Filed Nov'r 20, 1885.

H. D. GAMBLE, *Clk.*

69 Circuit Court of United States, West. District of Penna. May Term, 1884. In Equity.

JOHN H. DEVEREUX, a Citizen of Ohio,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* } 25.

The petition of John M. Shedd respectfully showeth as follows:

That on or about the seventeenth day of March, A. D. 1886, John H. Devereux, the plaintiff in this cause, died.

That on the 30th day of March, A. D. 1886, your petitioner, John M. Shedd, was duly appointed trustee under the deed of trust dated the first day of July, 1877, in the first paragraph of the amended bill mentioned, and whereof a true copy is set forth in Exhibit A to the said amended bill, in the room and stead of the said John H. Devereux, deceased, said appointment having been duly made by the court of common pleas of Mercer county, of the State of Pennsylvania, in accordance with the terms of the said deed of trust.

That it has been agreed by the parties to this cause that your petitioner be substituted as plaintiff in the cause with the same effect as if such substitution had been made in due course by bill of revivor and decree thereon, as appears by the exhibit hereto
70 annexed (and which it is prayed may be taken as part hereof) marked Exhibit A.

Wherefore your petitioner prays that he be substituted as plaintiff in this cause accordingly in the room and stead of the said John H. Devereux, deceased, with like effect as if under and by virtue of a bill of revivor duly filed.

And he will ever pray, &c.

JOHN M. SHEDD, *Pet'r.*

STATE OF NEW YORK, } ss:
City & County of New York, }

John M. Shedd, being duly sworn according to law, says that the facts set forth in the foregoing petition, so far as the same are stated on his own knowledge, are true, and so far as they are stated on information and belief are believed by him to be true.

JNO. M. SHEDD.

Sworn and subscribed to before me this 9th day of April, A. D. 1886.

[SEAL.]

W. F. DUNNING,
Notary Public, N. Y. City & Co.

71 EXHIBIT A.

It is agreed that John M. Shedd be substituted as plaintiff in this cause in the stead of John H. Devereux, deceased, with the same effect as if by bill of revivor duly filed.

DUNNING & EDSALL,
Sol'rs for Pl'ff.
DAVIES, COLE & RAPALLO,
Sol'rs for Adams & Others.
W. F. DUNNING,
Of Counsel for Def't, Shenango & Allegheny R. R. Co.
WAYNE MACVEAGH,
For Thomas Powell Fowler.
FRANCIS RAWLE,
For Henry Rawle, Trustee, and for J. J. Shryock, Intervening Bondholder.

72 *Decree.*

And now, April 16th, 1886, on consideration of the foregoing petition and affidavit and the agreement contained in Exhibit A thereto, it is ordered and decreed that John M. Shedd be, and he hereby is, substituted as plaintiff in the cause with the same effect as if by bill of revivor duly filed.

By the court:

73 *Petition of John M. Shedd. Agreement. Decree.*

Circuit Court of the United States, W. D. of Pa. May Term, 1884.

JOHN H. DEVEREUX
vs. } 25.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY *et al.*

Filed Ap'l 16, 1886.

H. D. GAMBLE, *Clk.*

74 THE UNITED STATES OF AMERICA,
Western District of Pennsylvania:

In the Circuit Court. May Term, 1884. In Equity.

JOHN H. DEVEREAUX, as Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 25.

To the honorable judges of said court:

I. The petition of The First National Bank of Cleveland, Ohio, a citizen of Ohio; The Second National Bank of Erie, Pennsylvania, a citizen of the State of Pennsylvania; The First National Bank of Greenville, Pennsylvania, a citizen of said last-named State; The Mahoning Na-

tional Bank of Youngstown, Ohio, a citizen of said last-named State, and all banking corporations under the statutes of the United States; Wick, Brothers & Company, a copartnership, and residents and citizens of Youngstown, in the State of Ohio, and Thomas H. Wells, resident and citizen of said last-named place, respectfully represent that the plaintiff in his bill of complaint filed in the above-entitled case against the defendants, among other things, says, in the second paragraph thereof, that "on or about the first day of July, A. D. 1877, the Shenango and Allegheny Railroad Company duly executed and delivered to your orator a deed of trust in due form of law, wherein and whereby the said company, for the purpose of securing the payment of its certain bonds and coupons therein men-
75 tioned, did grant, bargain, and sell to your orator, as trustee, the entire railroad built and to be built of the said Shenango and Allegheny Railroad Company, from its junction with the Atlantic & Great Western railroad near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley road, together with all its branches, extensions, side tracks, switches, and turn-outs, built and to be built," &c., a true copy of which deed purports to be attached to said bill.

II. Among other things the orator therein prays "judgment against the defendant company; that an accounting may be had and taken in the premises of the amount of bonds outstanding and secured by the aforesaid deed of trust to the complainant; that the whole amount of said bonds, both principal and interest, may be adjudged to have become due and payable according to the terms of said deed of trust; that the amount due upon the bonds secured by the said mortgage executed to Henry Rawle, trustee, * * * and the respective priorities of all the incumbrances and charges upon the said property, or any part thereof, or upon the proceeds of the same — settled and determined; that the mortgaged premises may be sold under direction of this honorable court free, clear, and discharged from all liens, claims, and demands whatsoever in this bill mentioned."

III. Your petitioners would further represent that the First National Bank of Cleveland, Ohio, is the owner and holder, as hereinafter stated, of the following bonds of the Shenango and Allegheny
76 Railroad Company, all duly made, executed, and delivered by said railroad company, to wit: Sixty-four bonds, each for the sum of one thousand dollars ($1,000 00), and dated July 1st, 1877, payable thirty (30) years thereafter, with interest at seven (7) per cent., payable semi-annually; to each and every one of said bonds is attached coupons or interest warrants to become due thereon; said bonds are numbered thirteen hundred and fifteen (1315) to thirteen hundred and thirty-four (1334), inclusive; fourteen hundred and fifty-six (1456) to fourteen hundred and ninety-six (1496), inclusive, and fifteen hundred and two (1502) to fifteen hundred and four (1504). The following coupons are over due on said bonds and default for want of payment, to wit, those due January 1st, 1878, and those due each six months thereafter until the present time, and all secured by said mortgage, dated July 1st, 1877, which

is the same mortgage mentioned in plaintiff's amended bill, subject by the terms of said mortgage only to a first mortgage upon forty (40) miles of the main line thereof and no more: that the said First National Bank of Cleveland holds the said bonds so secured as aforesaid to secure the payment of the two certain promissory notes of the Shenango and Allegheny Railroad Company hereinafter fully set forth; that the Shenango and Allegheny Railroad Company made and delivered two promissory notes owned and held by this First National Bank of Cleveland, both payable to and endorsed by the Mercer Mining and Manufacturing Company, both payable sixty (60) days after the date thereof, one for twenty-five thousand dollars ($25,000.00), dated the 18th day of February, 1884, and the other for five
77 thousand dollars ($5,000.00), dated the 23rd day of February, 1884, and there is due to said The First National Bank of Cleveland, Ohio, from said Shenango and Allegheny Railroad Company the sum of thirty thousand dollars ($30,000.00), with interest on five thousand dollars ($5,000.00) from and — day of June, A. D. 1885, and on twenty-five thousand dollars ($25,000.00) from the — day of June, A. D. 1885; it is entitled to receive from the proceeds of said road the interest and principal of said bonds ratably and in proportion with all the other holders thereof until its said debt is entirely paid.

IV. That the Second National Bank of Erie, Pennsylvania, is the owner and holder, as hereinafter stated, of the following bonds of the Shenango and Allegheny Railroad Company, all duly made, executed, and delivered to it, to wit: Sixty (60) bonds, each for the sum of one thousand dollars ($1,000.00) and dated July 1st, 1877, and of the same series and tenor as those described in paragraph III hereof, and were executed and delivered to said Second National Bank of Erie, Pennsylvania, to secure the note of said company, as follows: One note of twenty-five thousand dollars ($25,000.00) made by the Shenango and Allegheny Railroad Company and delivered to the West Penn. & Shenango Connecting Railroad Company, and by it endorsed and delivered to the Mercer Mining and Manufacturing Company, and by it delivered to the said Second National Bank of Erie, Pennsylvania, to secure which forty-four (44) of the said bonds were delivered to it, numbered thirteen hundred
78 and five (1305) to thirteen hundred and fourteen (1314), inclusive, and thirteen hundred and eighty-one (1381) to fourteen hundred and four (1404), inclusive; one note of five thousand dollars ($5,000.00), secured by eight (8) of said bonds, numbered thirteen hundred and thirty-five (1335) to thirteen hundred and forty-two (1342), inclusive, and one note of five thousand dollars ($5,000.00), secured by eight of said bonds, numbered thirteen hundred and seventy-two (1372) to thirteen hundred and eighty (1380), inclusive, all of which notes are due and wholly unpaid.

V. That the First National Bank of Greenville, Pennsylvania, is the owner and holder, as hereinafter stated, of the following bonds of the Shenango and Allegheny Railroad Company, all duly made, executed, and delivered to it, to wit: Twenty-two (22) bonds, each for the sum of one thousand dollars ($1,000.00) and dated July 1st,

1877, and of the same series and tenor as those described in paragraph III hereof, and are numbered as follows: From — to —, inclusive, and were executed and delivered to said First National Bank of Greenville, Pennsylvania, which holds the bonds aforesaid as security for the payment of two certain promissory notes, described as follows: Each note being for the sum of ten thousand dollars ($10,000.00), and both are wholly due and unpaid.

VI. That the said Mahoning National Bank of Youngstown, Ohio, is the owner and holder, as hereinafter stated, of the follow-
79 ing bonds of the Shenango and Allegheny Railroad Company, all duly made, executed, and delivered to it, to wit: Sixteen (16) bonds, each for the sum of one thousand dollars ($1,000.00), and dated July 1st, 1877, and of the same tenor and series as those described in paragraph III hereof, and are numbered as follows: From thirteen hundred and forty-three (1343) to thirteen hundred and fifty-four (1354), inclusive, and from thirteen hundred and sixty-five (1365) to thirteen hundred and sixty-eight (1368), inclusive, and were executed and delivered to said Mahoning National Bank to secure the payment of two (2) certain promissory notes which are now wholly unpaid and described as follows: One of five thousand dollars ($5,000.00), dated February 2nd, 1884, and payable sixty (60) days after date, and one of five thousand dollars ($5,000.00), dated March 7th, 1884, and payable sixty (60) days after date, and both are due and wholly unpaid.

VII. That Wick Brothers and Company are the owners and holders, as hereinafter stated, of the following bonds of the Shenango and Allegheny Railroad Company, duly made, executed, and delivered to them, to wit: Five (5) bonds, each for the sum of one thousand dollars ($1,000.00), and dated July 1st, 1877, and of the same tenor and series as those described in paragraph III hereof, and are numbered as follows: From thirteen hundred and fifty-five (1355) to thirteen hundred fifty-eight (1358), inclusive, one thirteen — ninety-
80 five (1395), and were executed and delivered to said Wick, Brothers and Company to secure the payment of a certain promissory note, which is now wholly unpaid, and described as follows: Said note is for the sum of twenty-five hundred dollars ($2,500.00), and dated February 12th, 1884.

VIII. That Thomas H. Wells is the owner and holder, as hereinafter stated, of the following bonds of the Shenango and Allegheny Railroad Company, made executed, and delivered to him, to wit, two (2) bonds, each for five hundred dollars ($500.00), and numbered eighteen hundred and sixty-five (1865) and eighteen hundred and seventy (1870); ten (10) bonds, each for the sum of one hundred dollars ($100.00), and numbered from twenty-three hundred and thirty-one (2331) to twenty-three hundred and forty (2340), inclusive; one bond for one thousand dollars ($1,000.00), numbered thirteen hundred and four (1304); four bonds for one thousand dollars ($1,000.00) each, and numbered from thirteen hundred and sixty-nine (1369) to thirteen hundred and seventy-two (1372), inclusive, and one bond for one thousand dollars ($1,000.00), and numbered fourteen hundred and fifty-five (1455); all said bonds were dated

July 1st, 1877, and are of the same tenor and series as those described in paragraph III hereof, and were executed and delivered to said Thomas H. Wells to secure the payment of a certain promissory note, which is described as follows: Said note is for the sum of five thousand dollars ($5,000.00), and is dated February 25th, 1884, payable at twenty (20) days from its date.

81 IX. That J. H. Devereaux, who was the trustee named in the conveyance to secure said bonds, has since deceased, and John M. Shedd has been duly appointed his successor and now is the plaintiff in this case, and might be supposed to fully represent and protect the rights of the different bondholders in the property securing the same; but your petitioners are informed and believe that he is committed to a course and is acting in a manner which is calculated to injure them in their security, in this, to wit, that there is on foot a certain scheme for the reorganization of said railroad company which contemplates a "united and friendly foreclosure" and sale of the entire road under the two mortgages named in plaintiff's amended bill, and this action now pending is to be used as the means of carrying forward said reorganization scheme in connection with certain proceedings to be instituted upon the mortgage, in which Henry Rawle is named as trustee, and mentioned in plaintiff's said bill; that there are certain questions as to the extent of the lien of the said Rawle mortgage and the number of the bonds outstanding and the amount that is due thereon, which should be determined in this action, and which the petitioners are informed and believe that the said Shedd, trustee, does not intend to raise, and which, petitioners are informed and believe, if raised, will be determined against the validity and amount of a large portion of said bonds, but if left to the claim of the holders thereof and their trustee would amount to over one million dollars

82 ($1,000,000.00), and be made a charge and lien upon said premises superior to that of the bonds held by the petitioners; and there are also disputes as to the extent of the liens of the two mortgages, the said Rawle claiming a first lien upon the entire road, and the petitioners claiming that it is only a lien upon forty (40) miles of the main line, and that theirs is a first lien upon the entire balance.

That petitioners are informed and believe that it is a part of said scheme to which said Shedd, trustee, is committed to have the interest in said railroad covered by the conveyance to Devereaux sold without a determination of these questions, and by so doing the petitioners say that the value of their security will be greatly diminished, first, by not being able to know the exact extent thereof; and, secondly, by being unable, by reason of the uncertainties existing as to the extent of their lien, to protect the property from being sacrificed upon sale, and as to these matters they beg leave of the court to refer for a fuller statement of the same to their pleadings allowed by the court to be filed in case No 17, in equity, May term, 1884.

Your petitioners are informed and believe and therefore aver that of the issues of said bonds, of which said Shedd is trustee, they hold

one hundred and seventy-five thousand dollars ($175,000.00) thereof,
and that the holders of said two hundred thousand dollars
83 ($200,000.00) named in the petition have assented to the
scheme of reorganization, which includes a sale of the road and an issue of a like amount of bonds to them, which are to be a third lien upon the entire road after one million two hundred and seventy-five thousand dollars ($1,275,000.00) of prior bonds, and for that reason the said trustee is favorable thereto, and by reason thereof is unmindful of the interests and rights of your petitioners. Your petitioners aver that if they be allowed to intervene and become parties herein they will be able to fully protect their rights in the premises, and unless the court so allows they will greatly suffer, and their security be greatly impaired, and for which they will have no adequate remedy at law.

Your petitioners therefore pray this honorable court to permit them to intervene and become parties defendants *pro inter esse suo* in the above-entitled case, and to file such cross-bills or other pleadings as they may be advised by counsel is proper in the premises, and to have such other and further relief in the premises, either jointly or severally, as to justice and equity may appertain and to your honorable court may seem meet.

And your petitioners will ever pray.

FIRST NATIONAL BANK OF CLEVELAND, OHIO,
SECOND NATIONAL BANK OF ERIE, PA.,
MAHONING NATIONAL BANK OF YOUNGSTOWN, OHIO,
FIRST NATIONAL BANK OF GREENVILLE, PA.,
WICK BROTHERS & COMPANY,
THOMAS H. WELLS,
By R. B. MURRAY,
Solicitor for Petitioners.

84 THE UNITED STATES OF AMERICA,
Northern District of Ohio:

Before me, the undersigned authority, personally appeared Paul Wick, who, being duly sworn according to law, doth depose and say that he is one of the members of the firm of Wick Brothers & Company; that he is the duly constituted attorney and agent of the other petitioners above named, and that the matters set forth in the foregoing petition are within his personal knowledge, and that he has read over the foregoing petition and the facts as therein stated are just, true, and correct according to the best of his knowledge and belief.

PAUL WICK

Sworn to before me and subscribed in my presence this 6th day of May, A. D. 1886.

A. W. JONES,
U. S. Commissioner for said Dis't.

85 And now, to wit, May 8th, 1886, the within petition presented in open court, and, upon motion of counsel for petitioners, leave is granted to file the same; and petitioners' counsel further moves the court to permit the petitioners to intervene *pro inter esse suo*, and to become parties defendant to the complainant's bill; and thereupon the 19th day of May, 1886, at ten o'clock a. m., is fixed for the hearing of said motions, and it is ordered that notes thereof be given to the counsel for the complainant, the counsel for the Shenango and Allegheny R. R. Co., and Henry Rawle, trustee.

By the court:

86 *Petition of First National Bank of Cleveland, Ohio, et al. for Leave to Become Parties pro inter esse suo.*

UNITED STATES OF AMERICA,
Western District of Pennsylvania:

Circuit Court. May Term, 1884. In Equity.

JOHN H. DEVEREAUX, Trustee, &c., *vs.* THE SHENANGO AND ALLEGHENY R. R. Co. *et al.* — Case No. 25.

Filed May 8th, 1886.

H. D. GAMBLE, *Clk.*

R. B. MURRAY,
Attorney for Petitioners.

87 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN H. DEVEREUX, Trustee, *vs.* THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* — No. 25.

To the honorable the judges of the said court:

The answer of Henry Rawle, trustee, to the petition of The First National Bank of Cleveland, Ohio; The Second National Bank of Erie, Pennsylvania; The First National Bank of Greenville, Pa.; The Mahoning National Bank of Youngstown, Ohio; Wick Brothers & Co., of Youngstown, Ohio, and Thomas H. Wells, of the said city of Youngstown, Ohio, filed on the 8th day of May, 1886, respectfully shows:

(1st.) The averments of the first and second paragraphs of the petition are admitted.

(2nd.) The averments of the third, fourth, fifth, sixth, seventh, and eighth paragraphs of the petition are denied. Each one of the peti-

tioners, it is admitted, has the custody or possession of cer-
88 tain bonds referred to in said paragraphs, but your respond-
ent, on information received, alleges that they held them illegally or improperly, and that they have no legal title or right thereto.

3rd. In so far as the averments of the ninth paragraph of the petition *is* intended to assert that there is any fraudulent combination or arrangement for the sale of the Shenango and Allegheny Railroad Company's property the same is denied, but it is a fact that the holders of bonds under the Rawle and the Devereux mortgages, aggregating in amount over nine hundred thousand ($900,000) dollars, and also all the stockholders of the company, with the exception of a comparatively few shares, have agreed upon a plan by which the said railroad company's property is to be sold and a reorganization effected.

This became necessary owing to the fact that the said company is largely in default in the payment of interest on its first and second mortgage bonds, and also in the payment of its floating debt, and the only possible hope for the holders of bonds under the first and second mortgages, and also the stockholders was to agree upon some amicable manner by which the property could be sold.

The petitioners, notwithstanding their title to the bonds they hold is, as your respondent believes, illegal, were treated exactly as the other holders of mortgage bonds under the Devereux mortgage, and this notwithstanding, also, that they hold the bonds which
89 they have at a valuation of about fifty (50) cents on the dollar, thus largely increasing any security they would receive from a new mortgage.

Petitioners, as your respondent verily believes, expecting and hoping by intervention in this case and further delay and litigation to compel the other bondholders and stockholders to make a more favorable settlement with them than is made with the other Devereux bondholders, have filed this petition and threaten to take such steps as will greatly delay and postpone any sale of the company's property.

It is untrue that there is any arrangement to prevent the petitioners from raising the question of the extent of the lien of the Rawle mortgage and the number of bonds that are legitimately outstanding under said Rawle mortgage, but it is true that the plan proposed contemplates a sale of the railroad company's property and allows any person who desires to raise these questions of fact to do it on the distribution of the proceeds of the sale.

Sworn to and subscribed this June 10th, 1886.

HENRY RAWLE.

Coram.

H. D. GAMBLE, *Cl'k.*

90 *Answer of Henry Rawle, Trustee, to Petition of First Nat. B'k, Cleveland, et al., to Intervene and Become Parties Plaintiff.*

91 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

DEVEREUX, Trustee,
vs.
SHENANGO AND ALLEG'Y R. R. Co. } No. 25.

Filed June 10, 1886.

H. D. GAMBLE, *Clk.*

John H. Devereux, receiver:

A petition having been filed in said case by The First National Bank of Cleveland, Ohio; The Second National Bank of Erie, Pa.; The First National Bank of Greenville, Pa.; The Mahoning National Bank of Youngstown, Ohio; Wick Bros. & Co., of Youngstown, Ohio; Thomas H. Wells, of the same place, and —, praying that they may be made parties in the above-entitled cause, and the matters having been argued by counsel, and the said matter having received due consideration, it is ordered that the said petitioners be admitted as parties plaintiff in this cause, and that they have leave to file such pleadings herein and to make such application to this court from time to time as they shall be advised shall be proper for the protection of their rights severally or jointly.

This order is made without intending to pass upon the question whether the intervenors are the *bona fide* holders of the bonds claimed by them.

By the court:

92 *Order Permitting First National Bank of Cleveland et al. to Intervene as Parties Plaintiff.*

May T., 1884. Equity.

J. H. DEVEREUX, Trustee,
vs.
SHENANGO & ALLEGHENY R. R. Co. } No. 25.

Filed June 10, 1886.

H. D. GAMBLE, *Clk.*

93 Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

JOHN M. SHEDD, Trustee, Plaintiff by Substitution in the Place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Citizen of Pennsylvania, *et al.* } No. 25

And now, May —, 1886, on motion of Dunning & Edsall, solicitors for John M. Shedd, the bill in this cause is amended so that the

title of the same may read as above set forth, and the bill itself is as follows:

To the judges of the circuit court of the United States for the western district of Pennsylvania, in the third circuit:

John M. Shedd, who was heretofore substituted as plaintiff in this cause in place of John H. Devereux, a citizen of Ohio, residing in the city of Cleveland, in that State, as trustee (now deceased), brings this, his amended bill, against The Shenango and Allegheny Railroad Company, a corporation, citizen of Pennsylvania; Henry Rawle, trustee, a citizen of the State of Pennsylvania; Thomas
94 P. Fowler, receiver of the said The Shenango and Allegheny Railroad Company, a citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a corporation and citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a corporation and citizen of the Kingdom of Great Britain, and William A. Adams, a citizen of the Kingdom of Great Britain; and thereupon your orator complains and shows as follows:

First. During the times hereinafter mentioned the defendant, The Shenango and Allegheny Railroad Company, was, and it still is, a corporation incorporated, organized, and existing under the laws of Pennsylvania and engaged in maintaining and operating a railroad in said State.

Second. On or about the first day of July, A. D. 1877, the said defendant, The Shenango and Allegheny Railroad Company, duly executed and delivered to the said John H. Devereux a deed of trust, in due form of law, wherein and whereby the said company, for the purpose of securing the payment of its certain bonds and coupons therein mentioned, did grant, bargain, and sell to the said John H. Devereux, as trustee, the entire railroad, built and to be built, of the Shenango and Allegheny Railroad Company, from its junction with the Atlantic and Great Western railroad, near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley railroad, on the east side of the Allegheny river,
95 together with all its branches, extensions, side tracks, switches, and turn outs, built and to be built, and also all the lands, rights, franchises, and appurtenances thereunto belonging, and also all engines, locomotives, cars, tools, machinery, rolling-stock, supplies, and personal and real property of every name and nature connected with or belonging to the said company on or along its said railroad, and used by it in operating its said railroad, whether said property was then in existence or should thereafter be built or constructed, or whether said property had been acquired by the said company or should be thereafter acquired by the said company, and also all the corporate rights and franchises of said railroad company.

A copy of said deed of trust is annexed hereto, marked "Schedule A," and made a part of this bill, and your orator prays leave to refer thereto from time to time as occasion may require.

It is further provided by the terms of said deed of trust that it

should be subject to previous mortgage on forty miles of the northwestern end of the said railroad of the Shenango and Allegheny Railroad Company and its appurtenances, which mortgage had been executed to Henry Rawle, trustee (one of the defendants hereto), to secure the payment of the bonds of said company to the amount of one million of dollars and the coupons thereto attached.

Third. Since the execution and delivery of said deed of trust a portion of the railway of the defendant company and its branches and extensions then remaining unbuilt or unfinished
96 has been constructed and equipped and has become subject to the lien of said trust deed, as your orator is informed and believes.

The property which, in addition to the main line, has thus become and now is subject to the lien of the said mortgage is fully set forth in the exhibit hereto annexed, which is marked "Schedule B," and which your orator prays may be taken as part of this bill.

And your orator further shows that said deed of trust is a first lien upon all the main line of road of the defendant, The Shenango and Allegheny Railroad Company, excepting only forty miles of said main line extending southeasterly from its junction with the Erie and Pittsburgh railroad at Shenango, and is a first lien upon all the lateral branches of said road. The part of said main line and the lateral branches upon which said deed of trust is a first lien are about thirty-five miles in length. The whole line of the said railroad, including branches, is about seventy-five miles in length.

Fourth. Said deed of trust was so as aforesaid executed and delivered to the said John H. Devereux to secure bonds of said company, to be issued payable to the said John H. Devereux or bearer, in various sums amounting in the aggregate to one million dollars, for the purposes therein set forth. The said bonds were to be payable on the first day of July, 1907, and were to draw interest at the rate of seven per centum per annum. Coupons were attached
97 to the said bonds for the payment of the interest thereon at the rate aforesaid on the first days of January and July in each year until the maturity of said bonds.

Fifth. It was in and by said deed of trust provided that if at any time the said grantor should suffer and permit any of the coupons aforesaid to remain due and unpaid and in arrear for a period of eighteen months after the same should be due and payable, and after due demand of payment should be made at the place where the said coupons should be made payable, then the principal of the said bonded indebtedness should, at the option of one-tenth in amount of the holders thereof, in the name of the trustee aforesaid, his successor or successors in office, *might* maintain an action at law or in equity to recover the amount of the bonds and accrued interest thereon then outstanding as aforesaid, and upon the fact being judicially ascertained by the judgment of any court of competent jurisdiction that the grantor had thus been in default, the said trustee, or his successor, was directed by the said deed of trust upon the request of any of the holders of said bonds, to proceed to foreclose the said mortgage, and in such case the said trustee was authorized

and empowered upon notice to sell at public auction the entire real and personal property mortgaged as aforesaid, and to execute to the purchaser a conveyance of the mortgaged premises, with directions to pay the expenses of said proceedings and the interest and principal out of the proceeds of said sale in the order and sub-
98 ject to the terms in the said deed of trust set forth.

Sixth. Of the said bonds secured by the said deed of trust there were issued by the defendant company, in or about the year 1877, bonds amounting in the aggregate to the sum of $200,000, all of which are still outstanding and unpaid, and there have since been issued by said company, in conformity with said deed and for purposes therein specified and are still outstanding, additional bonds secured by the same deed of trust, amounting in the aggregate to the sum of $175,000, as your orator is informed and believes.

Seventh. The defendant company made default in the payment of the semi-annual interest, which became due and payable on $200,000 of said bonds on the first day of January, 1878, and has ever since suffered and permitted the coupons for said interest to remain due and unpaid and in arrear, although demand of payment thereof was duly made more than eighteen months ago at the place where the said coupons were made payable, and it is the desire of more than one-tenth in amount of the holders of all of the bonded indebtedness secured by said deed of trust, and they have elected and determined, that the principal of said bonded indebtedness shall become and be forthwith due and payable, and requested that the said John H. Devereux, trustee, should proceed to foreclose the said mort-
gage, as your orator is informed and verily believes.

99 Eighth. Besides the interest on said bonds so unpaid and remaining in default, as aforesaid, the defendant company has also made default in the payment of other and later interest, which from time to time became due and payable upon said bonds, and has suffered and permitted to remain due and unpaid and in arrear the coupons for such later interest, since it accrued to the amount of upwards of $75,000 in the aggregate, as your orator is informed and verily believes.

Ninth. The defendant company is further indebted to large amount for wages, materials, supplies, and otherwise, which it is unable to pay, as your orator is informed and believes, but to what amount and the particulars thereof your orator has no exact information.

Tenth. And your orator further shows, on his information and belief, that the net revenue of said defendant company, derived from the premises mortgaged to your orator in and by said trust deed, and which are its only source of income, have not only been insufficient to pay the interest on the outstanding bonds secured thereby in the past, but are and will continue to be inadequate to pay the interest due and to grow due thereon hereafter; that the net revenue and income of the mortgaged premises in equity belong to your orator, as trustee, and that under the said deed of trust he is entitled to the possession and use of said mortgaged premises, and to collect, receive, and apply the net income received therefrom for the bene-

100 fit of his *cestuis que trustent;* that owing to the financial embarrassments of the defendant company there is imminent danger that the mortgaged premises, or some part thereof, may be proceeded against by its unsecured and general creditors to the damage and prejudice of your orator, as such trustee, and that by reason thereof he is in danger of being subjected to great expense, trouble, and delay in protecting his rights and those of his *cestuis que trustent*, and that he is wholly without adequate remedy at law in the premises.

Eleventh. Your orator further shows to the court that disputes have arisen between the holders of bonds secured by the aforesaid mortgage executed to Henry Rawle, as trustee, and the holders of the bonds secured by the mortgage executed to the said John H. Devereux and other creditors of the said railroad company, as to the extent of property covered by the lien of the aforesaid mortgage to Henry Rawle, trustee, and as to the priority of said lien. It is claimed by the said Henry Rawle, as trustee, and by the bondholders under the mortgage given to him, that the said mortgage is a lien upon certain portions of the said railroad in addition to the forty miles hereinbefore mentioned, the contrary whereof your orator charges to be true; and it is claimed by the said Henry Rawle, trustee, that the lien of the said mortgage is prior to all other liens upon so much of the railroad as is covered by it, whereas it is claimed by the defendant, Thomas Powell Fowler, as
101 receiver, that the said lien is subject to and is to be postponed to the amount due upon receivers' certificates issued by order of the court, and to the costs, charges, and expenses incurred and to be incurred in the cause wherein the said receiver was appointed.

Wherefore your orator shows to the court that the extent of the property covered by the said mortgage to Henry Rawle, trustee, and the priority of the lien of the said mortgage thereon, are each and all undetermined and in dispute, and that no advantageous or just sale of the said railroad property could be made subject to the said mortgage, inasmuch as the purchaser or purchasers at said sale would not with certainty be able to know precisely what property would be acquired by them, or what liens, if any, might exist upon the same in their hands, but that the said railroad property should be sold free and discharged from the lien of said mortgage, and so that the title to the same should be conveyed to and become vested in the purchaser discharged of and from any claim, dispute or cloud whatsoever.

Twelfth. Your orator further shows that heretofore, to wit, on the fifteenth day of March, A. D. 1884, in a certain cause in this court, No. 17, of May term, 1884, in equity, wherein Charles L. Young and Henry W. Tyler were complainants and the said Shenango and Allegheny Railroad Company were defendants, which cause
102 is still pending and undetermined, the defendant, Thomas Powell Fowler, was duly appointed receiver of the said railroad and of its franchises and property of every kind, and duly qualified as such receiver, and has continued to this date to discharge the duties of his said office, and that, under and by virtue of

certain orders of this court made in the said cause, receivers' certificates to the amount of one hundred and fifty-five thousand dollars have been issued and are still outstanding and unpaid. The amount of interest due on said certificates, calculated to April 1st, 1886, is $10,106.29, making the total, principal and interest, due on said outstanding certificates, as of said last-mentioned date, $165,956.16. It is claimed by the said receiver and by the holders of the said certificates that the same are a lien upon the property of the said railroad company prior to the liens of the mortgages hereinbefore mentioned, and that the same should be paid, with interest, in the first instance, from the proceeds of any sale of the said property; and it is further claimed by the said receiver that the costs, charges, and expenses incurred by him in the management and care of said property, and all allowances made or to be made to him in respect of said care and management are likewise a first lien upon the said property, and are entitled to priority over all other liens whatsoever.

And your orator further shows that that the defendants, The Bristol and South Wales Railway Wagon Company (Limited), The Union Rolling Stock Company (Limited), and William A. Adams,
103 claim that a large sum of money, to wit, over thirty thousand dollars, is due them by reason and in respect of certain car-trust contracts, and that it is expedient that if any sale of the locomotives, cars, or other equipment of the said railroad is to be made the rights of the said last-mentioned defendants in the premises should be ascertained; or that the purchaser at said sale should take title free and discharged from said claims.

Thirteenth. Your orator further shows that by reason of the said John H. Devereux having been in his lifetime engaged in the operation and management of an extensive railroad system in other States, it was impracticable for him, as such trustee, to take the possession of the mortgaged premises, and to use and operate the same, and conduct its business under the provisions of said deed of trust, and that the appointment of a receiver by this honorable court competent to take possession of said premises and operate the same during the pendency of this action will be for the benefit and advantage of your orator and his *cestuis que trustent*, and of all others interested therein.

And your orator further shows that heretofore, and after the filing of the original bill in this cause, the said John H. Devereux died, and that your orator was duly appointed trustee in his stead, and was duly substituted as plaintiff in this cause, as by reference to the record in this cause will fully appear.

104 Wherefore your orator prays judgment against the defendant company that an accounting may be had and taken in the premises of the amount of bonds outstanding and secured by the aforesaid deed of trust to the complainant; that the whole amount of said bonds, both principal and interest, may be adjudged to have become due and payable according to the terms of said deed of trust; that the amount due upon the bonds secured by the said mortgage executed to Henry Rawle, trustee, and the amount due upon said receiver's (Thomas P. Fowler's) certificates, and the

amounts due for the costs, charges, and allowances of said receiver, and in the cause wherein he was appointed and the amounts due under said car-trust contracts, be each and all ascertained and declared, and the respective priorities of all the incumbrances and charges upon the said property or any part thereof or upon the proceeds of the same settled and determined; that the mortgaged premises be sold under direction of this honorable court, as well by virtue of the power in the said court as under and by virtue of the power of sale in the said mortgage to John H. Devereux, trustee, contained and hereinbefore referred to, free, clear, and discharged from all the liens, claims, and demands whatsoever in this bill mentioned, or which may exist or be made for the satisfaction of the amount which may be found to be due to your orator as such trustee, and that meantime a receiver may be appointed to take possession of all and singular the mortgaged premises, to use and operate the same and conduct its business, and to collect and receive the rents, profits, and income thereof for the benefit and advantage of your orator and his *cestuis que trustent* under said deed of trust, with proper directions as to an accounting, and the application thereof from time to time pending this action; and that your orator may have such other and further relief in the premises as to the court may seem just and proper—

105

May it please this honorable court to grant to your orator a writ of subpœna, directed to the said The Shenango and Allegheny Railroad Company, Henry Rawle, trustee; Thomas P. Fowler, receiver; The Bristol and South Wales Railway Wagon Company (Limited), The Union Rolling Stock Company (Limited), and William A. Adams, commanding them and each of them, at a certain day and under a certain penalty to be therein inserted, to be and appear before this honorable court, then and there to answer the premises, and to stand and abide such order and decree therein as to this honorable court shall seem agreeable in equity and good conscience.

And your orator as in duty bound will ever pray, &c.

DUNNING & EDSALL,
Solicitors for Complainant.
JOHN M. SHEDD.

106

STATE OF NEW YORK, }
City and County of New York, } *ss:*

John M. Shedd, being duly sworn according to law, deposes and says that the facts set forth in the foregoing amended bill, so far as the same are stated of this deponent's knowledge, are true and so far as the same are stated on information and belief are believed by him to be true.

JOHN M. SHEDD.

Sworn to and subscribed before me, a notary public in and for said city and county, this 19th day of May, A. D. 1886.

[SEAL.] FRED. S. WAIT,
Notary Public N. Y. Co.

107 SCHEDULE A.

This indenture, made this first day of July, one thousand eight hundred and seventy-seven, between the Shenango and Allegheny Railroad Company, a corporation duly incorporated and organized under the laws of the Commonwealth of Pennsylvania, of the one part, and John H. Devereux, of the city of Cleveland, Cuyahoga county, in the State of Ohio, trustee, for the purposes hereinafter named, of the second part—:

Whereas the said Shenango and Allegheny Railroad Company has agreed to issue its bonds, payable to the said trustee or bearer, in various sums, amounting in the aggregate to one million dollars, which bonds are to be issued for the purpose of paying an indebtedness of the said railroad company to H. Wallaston Blake and George Herring, trustees, incurred on account of the construction of a part of its railroad, and the remainder of said bonds are to be issued for the purpose of meeting and covering the cost of constructing and extending its railroad from the present terminus thereof, at or near Hilliard's mills, to or near the town of Petrolia, in Butler county, State of Pennsylvania, and from thence to its contemplated junction with the Allegheny Valley railroad, on the east side of the Allegheny river, in said State, being a distance of about twenty-two miles; and the said bonds, or a portion thereof, are also to be issued fore the purpose of constructing any branch or branches leading from and connecting with the main line of the company's
108 railroad and also for the purpose of building side tracks, switches, depots, stations, and purchasing the necessary rolling-stock and equipment for the successful operation of said railroad. The said bonds are to be payable on the first day of July one thousand nine hundred and seven, and are to draw interest at the rate of seven per centum per annum; coupons are attached to the said bonds for the payment of the interest thereon, at the rate aforesaid, on the first days of January and July in each year until the maturity of the said bonds. The said bonds are numbered and are of the respective amounts as follows, to wit: Seven hundred and fifty bonds of one thousand dollars each and numbered from one thousand one hundred and one to one thousand eight hundred and fifty, inclusive; four hundred and eighty bonds of five hundred dollars each and numbered from one thousand eight hundred and fifty-one to two thousand three hundred and thirty, inclusive, and one hundred bonds of one hundred dollars each and numbered from two thousand three hundred and thirty-one to two thousand four hundred and thirty, inclusive—

Now, for the purpose of securing the payment of the bonds and coupons aforesaid, this indenture witnesseth:

That the said Shenango and Allegheny Railroad Company, in consideration of the premises aforesaid and of one dollar paid by the said John H. Devereux, trustee, has granted, bargained, and sold; and by these presents does grant, bargain, and sell, to the said John H. Devereux, trustee, as aforesaid, and [to] his

successor or successors in the aforesaid trust, the entire
109 railroad, built and to be built, of the said Shenango and Allegheny Railroad Company from its junction with the Atlantic and Great Western railroad, near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley railroad, on the east side of the Allegheny river, together with all its branches, extensions, side tracks, switches, and turn-outs, built and to be built, and also all the lands, rights, franchises, and appurtenances thereunto belonging; and also all the engines, locomotives, cars, tools, machinery, rolling-stock, supplies, and personal and real property of every name and nature connected with or belonging to the said company on or along its said railroad, and used by it in operating its said railroad, whether said property is now in existence or shall hereafter be built or constructed, and whether said property has now been acquired by the said company or shall be hereafter acquired by the said company, and also all the corporate rights and franchises of said railroad company.

This indenture, however, is subject to a previous mortgage on forty miles of the northwestern end of the railroad aforesaid and its appurtenances executed to Henry Rawle, trustee, to secure the payment of the bonds of the company to the amount of one million dollars and the coupons thereto attached, which mortgage has been duly recorded in the counties of Mercer and Butler aforesaid; to have and to hold the said railroad and the lands, rights, franchises, and privileges aforesaid, together with the engines, locomo-
110 tives, cars, rolling-stock, and all the real and personal property above mentioned now owned by the said railroad company, and which it may hereafter acquire, and which in any way appertains to the same, to him the said John H. Devereux, trustee, as aforesaid, and his successor or successors in office, wherever, upon the trust, terms, and conditions following—that is to say, first, for the security of the bonds and interest thereon above mentioned, and if the interest on the bonds so to be issued shall not be paid by the party of the first part when the same shall fall due, and if such interest shall remain in arrear for thirty days after due and demand of payment, or if there shall be a failure to pay the principal of said bonds or any of them, or any part thereof, when due and demandable, according to the tenor and effect thereof, then in either case it shall be lawful for the said trustee, or his successor or successors in office, to take possession of all and singular the railroad, rolling-stock, real and personal property, and premises aforesaid conveyed or transferred or expressed or intended so to be, and to cause the said railroad to be used and operated and its business conducted by the said trustee and such agents, managers, and servants as he, his successor or successors, may appoint, and to apply the net income received therefrom to the payment, first, of the interest of said bonds and the surplus to the payment of the principal thereof, and at any time after default shall be made in the payment of the principal and interest above mentioned on any part thereof for the period of thirty days after due and pay-
111 ment duly demanded, upon the request of the holders of

twenty-five thousand dollars in amount of said bonds and coupons, said John H. Devereux, trustee, his successor or successors in office, or whoever may be trustee or trustees under this indenture, may and shall enter upon each and take possession of all and singular the said premises hereby conveyed and transferred or expressed, or intended so to be, and shall hold possession of the same, and use and operate the same, and apply the net income therefrom, after paying all costs and expenses and a reasonable compensation to the said trustee, his successor or successors, to the payment of the interest and principal aforesaid; and if at any time the said grantor shall suffer and permit any of the coupons aforesaid to remain due and unpaid and in arrears for a period of eighteen months after the same shall be due and payable, and after due demand of payment shall be made at the place where the said coupons are payable, then the principal of the said bonded indebtedness shall at the option of one-tenth in amount of the holders thereof become due and payable, and the holder or holders thereof in the name of the trustee aforesaid, his successor or successors in office, may maintain an action at law or in equity to recover the amount of the bonded and the accrued interest thereon then outstanding as aforesaid; and upon the fact being judicially ascertained by the judgment of any court of competent jurisdiction that the grantor has thus been in default of
the payment of any of the coupons aforesaid for the period of
112 eighteen months or more, the said John H. Devereux, trustee, or his successor [or] successors in office, shall at the request of any of the holders of said bonds proceed to foreclose this mortgage in accordance with the practice of the courts having jurisdiction thereof in the State of Pennsylvania, or in the circuit court of the United States of the proper district, and in the meantime the said John H. Devereux, trustee, and his successor or successors in office, shall be entitled after default in the payment of any of the coupons aforesaid for the period of thirty days to the possession, income, and use of the above-mortgaged real and personal property, and each and every part thereof, and shall be entitled, after the payment of the costs and expenses and charges as aforesaid, to apply the net revenue or income thereof to the payment of any accrued interest or indebtedness accrued by the said mortgage and remaining unpaid; and whenever, by reason of any default aforesaid, the said John H. Devereux, as trustee, his successor or successors in office, would be required or entitled to proceed to foreclose said mortgage upon the ground that the principal of said bonds has fallen due, then and in such a case the said trustee, or whoever may then be trustee, may at his option, upon giving notice in writing to the board of directors of the said — (which notice shall be served upon the president, secretary, or other acting officers of said company), and publishing notice in one or more newspapers published in the cities of New York, Pittsburgh, and Cleveland, for the period of sixty days of his intention to do so, proceed to
113 sell at public auction at the junction of said railroad of said company with the Atlantic and Great Western railroad, near Greenville aforesaid, the entire real and personal property above

mortgaged, and may execute to the purchaser a full, complete, and legal conveyance of all and singular the mortgaged premises aforesaid, or which may be sold by him or them as aforesaid, and from the proceeds of said sale or of the operation of said railroad until sold, after deducting just allowances for the services of said trustee or trustees and his or their expenses *and* said trustee, his successor or successors in office, shall pay, first, the interest in arrear of said bonds and then the principal thereof in full or ratably, so far as such proceeds or income shall suffice for all charges and expenses of operating and maintaining said road and the management of the said business. The said trustee, his successor or successors in office, shall be indemnified out of the proceeds of the sale of said road, if needful, as well as out of income thereof. In case any surplus shall remain in the hands of the trustee, or his successor or successors in office, the same shall be paid over to the party of the first part, its successors or assigns. But it is distinctly understood and agreed that if the said party of the first part shall well and truly pay the interest on the said bonds to be issued as the same shall fall due and be demanded, and also the principal thereof when the same shall fall due, and shall well and truly perform all the other covenants and conditions of said bonds, then the estate, title,
114 and interest of the party of the second part, his successor or successors in office, and in this trust shall cease and determine and become void, but otherwise shall remain in full force and virtue in law.

It is agreed between the parties hereto that after the issue and delivery to the said Blake and Herring, trustees as aforesaid, of two hundred thousand dollars of the bonds aforesaid *that* none of the above bonds shall be issued by the party of the first part except for the purpose of extending and constructing its railroad from its present terminus to or near the town of Petrolia aforesaid or to the Allegheny river, or for the purpose of constructing such branch or branches as its board of directors may deem necessary and properly to construct, or for the purpose of purchasing the necessary rolling-stock and equipments for its said railroad, and for the purpose of constructing necessary switches and turn-outs, and in no event shall any of the said bonds be issued for the purposes of construction of branches or extension of the main line at a greater rate than twenty-five thousand dollars per mile for each mile of railroad of a good and substantial character which said railroad company may construct, and the said trustee is hereby prohibited from certifying to any of the said bonds to be issued for such construction purposes—that is, for extension of main line or branches—at a greater rate than twenty-five thousand dollars per mile for such railroad as said company may actu-
ally construct; and it is hereby made the duty of said
115 trustee to see that no bonds are allowed to be issued or are certified by him for such construction purposes until the actual letting and contracting for the construction of the proposed branch, branches, or extension, and then only as the work progresses and upon the certificate of the chief engineer of said road

that the work is under contract or has been constructed. Nothing herein contained shall require said railroad company to construct more than one mile of the said road at any one time in order to entitle said railroad company to issue and sell twenty-five thousand dollars of the above-mentioned bonds. It is further agreed that if any of the aforesaid bonds shall be sold or required by the said railroad company for the purpose of providing rolling-stock for the use of said railroad, or constructing switches, side tracks or turn-outs, that before the trustee or trustees shall certify to the same, it shall be necessary for the said railroad company to state to the said trustee in writing what rolling-stock, switches, side tracks, or turn-outs its board of directors desire to purchase or construct, and the estimated cost thereof, and the said trustee, upon receiving such certificate from the board of directors of the first party, and being satisfied that the money will be applied in good faith for the purpose of buying rolling-stock or constructing said tracks or switches or turn-outs, shall certify to a sufficient amount of the above-mentioned bonds to enable the officers of the said railroad company from the
116 proceeds thereof to purchase the rolling-stock and construct the switches and side tracks and turn-outs so specified, and he shall from time to time upon like application certify bonds to be sold or used for the purpose of buying rolling-stock for the equipment of said road and constructing switches, side tracks, and turn-outs as aforesaid. It is further understood and agreed that the said grantors will during the existence of this mortgage keep up and maintain its said railroad and equipment in its present good condition, and that it will from time to time make all such needful repairs, additions, and improvements in its roadway, stations, depots, shops, rolling-stock, and equipment as good and efficient railroad management may require, and that all disputes and questions, if any, under this paragraph between the trustee or trustees and said grantor shall be settled by three competent engineers, one to be chosen by each party and the third by the two thus chosen, and the decision of a majority of them shall be conclusive and binding, and the grantor shall at once make the improvements or repairs so agreed upon or required, and upon failure to do so within the time and in the manner required by said referees the said trustee or trustees shall be at liberty to take possession of said railroad and make such repairs or improvements, and to defray the expense of such repairs or improvements from the income of said railroad. In case the trustee herein mentioned shall die or resign or be removed his successor or successors in the trust shall be appointed by the grantor and the
117 holders of the outstanding bonds secured by this mortgage by mutual agreement, and if they shall be unable to agree, then the court of common pleas of Mercer county, Pennsylvania, shall appoint some suitable trustee, but said court shall not make any such appointment until the holders of at least two hundred thousand dollars in amount of said bonds shall be notified and have a reasonable time to attend before said court and be heard in regard to such appointment.

In testimony whereof the said grantor, The Shenango and Allegheny Railroad Company, hath on this first day of July, A. D. 1877, caused this deed to be signed by its vice-president and secretary and attached thereto its corporate seal.

THOMAS H. WELLS, [SEAL.]
Vice-President.

[CORPORATE SEAL.] JNO. H. DYNES, *Secretary.*

In presence of—

——— ———.

The following-named amendments were made in this indenture before its execution, viz: The word "first," substituted for the word "second," in 26th line on first page; the words "that is for extension of main line or branches," interlined between the words "purposes" and "at" in 17th line on 6th page; the words "letting and contracting for the," interlined between the words "actual" and "construction" in 21st line on sixth page; and the words "or has been constructed," added after word "contract," in the 24th line on
118 sixth page; also the word "and," substituted for the word "or," after word "railroad," in 23rd line on second page.

F. E. RITMAN,
WM. S. DYNES,
Witnesses.

THE COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Mercer, }

This day came the Shenango and Allegheny Railroad Company, by Thomas H. Wells, its vice-president, who is well known to me to be such, and acknowledged the execution, signing, and sealing of the foregoing instrument to be its free act and deed for the purposes therein mentioned; and the said Thomas H. Wells acknowledged that he did, as such vice-president, duly sign, seal, execute, and deliver the foregoing instrument, and that the same is his free act and deed, and that he is still satisfied therewith.

This 21st day of September, A. D. 1877.

E. E. MILLER, *J. P.*

119 SCHEDULE B.

The main line of the said railroad extends from Greenville, in Mercer county, to Hilliard's, in Butler county, a distance of forty-seven miles. The complainant is also informed and believes that said defendant company owns under the following described titles and operates the following branches from Greenville to Hilliard's:

(1.) A branch known as the Reed branch, running eastwardly from Reed's station, in Pine township, Mercer county, on the main line of the road, a distance of one-half mile to Filer, Sutliff & Co., and Fruit, Carnes & Co.'s mines; of this branch the company owns one thousand feet of the track nearest the main line of the railroad company and all the ties.

(2.) The Filer branch, extending from a point near Filer station, in Pine township, Mercer county, westerly about one and one-half

miles to the coal mines of Westerman, Filer & Co., and the Sharon Coal Company, in said Pine township; of this branch the defendant company owns one thousand feet of the ties and rails nearest to the main line of the defendant company's road.

(3.) The Coaltown branch, running from Branchton, in Slippery Rock township, Butler county, on the main line, in a southerly direction through Cherry township, Butler county, three and two-tenths miles to Coaltown, in said Cherry township. This branch was originally constructed by the Union Coal and Coke Company, Limited, and purchased from said company by the defend-
120 ant company in 1883, for forty-eight thousand dollars ($48,000). Of this money the defendant company paid such sums that the entire balance unpaid, with interest, on March 1st, 1886, was twenty-three thousand and seven and fifty-three one-hundredths dollars ($23,007.53).

(4.) The South branch extends from Branchton, in said Slippery Rock township, in a southerly direction to Gommersal, in said Cherry township, and including its branches and sidings is five and one-quarter miles long.

(5.) The Bull Valley branch extends from a point on the main line in Marion township, Butler county, and one-half mile from Hilliard's station to Morristown, a distance of three and two-tenths miles.

(6.) Beginning from a point on the Coaltown branch, about one mile southwardly from Branchton, there was constructed about the year 1883 a line of railroad extending from said point down to Butler [county], a distance of about twenty-two miles; this road is called the West Penn. and Shenango Connecting railroad. This railroad is operated by the Shenango and Allegheny Railroad Company, under a joint contract between the Shenango and Allegheny Railroad Company, the Pennsylvania Railroad Company, and the West Penn. and Shenango Connecting Railroad Company, which contract includes an option to the Shenango and Allegheny Railroad Company to lease the said road. The said West Penn. and Shenango Connecting railroad connects the Shenango and Allegheny railroad
121 at Butler [county] with the West Pennsylvania railroad, and also with the Pittsburgh and Western railroad.

Connected with the said main line and the different branches thereof are various switches, turn outs, and sidings owned by the said defendant company, amounting in the aggregate to about ten and seven-tenths miles.

The said railroad and the sidings and branches are constructed on a right of way sixty feet in width at grade.

In connection with the said railroad the said company owns various depot grounds and depot buildings, identified generally as follows:

One depot at Greenville; one depot at Shenango; one depot at Hamburg; one depot at Fredonia, with ground for loading stock, &c.; one depot at Mercer, with ground for loading stock, &c.; one depot at Pardoe; one depot at Filer, with depot grounds; one depot at Harrisville, with ground for depot sidings, engine-house, and turn-

table; one depot at Branchton, with ground for turn-table and switches; one depot at Wicks' station: one depot at Bovard's, with depot grounds; one depot at Roy; one depot at Hilliard's, with ground for depot, engine-house, turn-table, &c.

The various depot grounds and buildings are all held by the company, excepting the one at Shenango, which is owned jointly with the New York, Pennsylvania and Ohio Railroad Company, and the one at Mercer, which is held jointly with the Buffalo, New York and Philadelphia Railroad Company.

At Shenango, on the line of the said road, are located its
122 car-shops, machine-shops, blacksmith-shops, casting-shops, sand-house, and other buildings, shops for the purpose of repairing and building the cars and locomotives; also offices of said railroad company. The main offices of the company are located at Greenville, in Mercer county, and consist of a suit of rooms leased, in which are three iron safes and desks, chairs, and other furniture, and also the books of the said company containing the accounts thereof.

Along at different places on the road and in connection with the same are trestles, engine-houses, turn-tables, water-tanks, track-scales, and various other appurtenances, and machinery, fixtures, and buildings connected and used with said railroad.

The motive-power and rolling-stock is as follows: Nine locomotives, five passenger coaches, two combination cars, passenger and baggage, one baggage and mail car, four caboose cars, five box cars, one hundred and thirty gondola coal cars, eleven flat cars, three stock cars, thirty-seven dump cars (coal), one tool car, one derrick car, sixteen hand cars, and fifteen push cars.

Three of the above locomotives and four of the above passenger coaches are held by said defendant company under a car-trust contract with the Pittsburgh Car Trust Company, dated October 1st, 1883, on which contract the balance due said car-trust company
will, on April 1st, 1886, be twenty-two thousand three hun-
123 dred and eighty-five and seventy one-hundredths dollars.

Of the above gondola coal cars one hundred and five are held under a car-trust contract with the Bristol and South Wales Railway Wagon Company, Limited, the Union Rolling Stock Company, Limited, and W. Adams.

The said company also owns fifty-seven miles of telegraph wire and fifty-four miles of poles with batteries, switch-boards, box-relays, keys, sounders, and other machinery necessary to operate a telegraph line, which is used in connection with the business of said railroad company.

The said company owns the following real estate:

(1.) A lot of land situate in the borough of Greenville, Mercer county, Pennsylvania, bounded and described as follows: Beginning on the east line of Race street, thence by a street lately laid out northerly sixty-one and three-quarter degrees east nine and one-tenth rods to the Erie canal; thence by the west side of the towing path of the Erie canal south twenty-eight and three-quarters degrees east twenty-four and three-tenths rods to a post on the line of

land owned by M. Hammill; thence by the said land of M. Hammill south eighty-nine degrees west twelve and seven-tenths rods to the line of Race street; thence by Race street north twenty-one and one-half degrees west, eighteen and seventy-five one hundredths perches to the place of beginning—containing two hundred and twenty perches of land, more or less.

(2.) The following-described portions of the Erie canal lying in the borough of Greenville and Hempfield township, Mercer
124 county, Pennsylvania:

(*a.*) That portion of the Erie canal in the borough of Greenville lying between the Little Shenango river and Cherry alley, being sixty feet wide on Cherry alley and ninety-two feet in width at the Little Shenango river and five hundred and twenty feet in length.

(*b.*) That portion lying between the south side of Clinton street in the said borough and that portion of the canal owned by F. Cooper.

(*c.*) That portion of the said canal between the northerly side of the Little Shenango river and a point four feet south of the bulkhead of lock No. 24, with the canal beds, banks, tow-path, and slopes; also, the ponds, basins, and lands now or formerly covered by the waters of said canal, and all the appurtenances of the said canal between the above-described points. The lots described in paragraph two are held by A. G. Egbert in trust for the defendant company.

(3.) (*a.*) A certain tract of land situate in West Salem township, Mercer county, Pennsylvania, bounded on the north by the Shenango river, east by the New York, Pennsylvania and Ohio railroad, south by the lands of Eisenhart's heirs, and west by the Erie and Pittsburgh railroad, containing twenty acres of land, more or less, on a part of which is located offices, machines-shops, and the Shenango yards of said company.

(*b.*) A triangular tract of land in said West Salem township bounded on the east by the track of the Shenango and Alle-
125 gheny railroad, south by the Shenango river, and west by the right of way of the New York, Pennsylvania and Ohio Railroad Company, containing eight acres of land, more or less.

(*c.*) Also a certain tract of land laid out in town lots in the village of Shenango, in said West Salem township, bounded and described as follows: Beginning at the northwest corner at a large white oak, thence by the lands of Daniel Knappenberger south eighty-nine degrees and twenty-six minutes east six hundred and eighty-one feet to a stone; thence south one degree and thirty minutes west two and five-tenths feet to a fence-post; thence along the lands of A. J. McDowell south eighty-five degrees and thirty-four minutes east eighteen hundred and forty-nine and five-tenths feet to a point in the centre of State street north fifteen degrees and fifteen minutes east two hundred and ninety-one and five-tenths feet to a point in the center of said State street; thence south eighty-six degrees and ten minutes east two hundred and twenty-nine and two-tenths feet to the right of way of the Erie and Pittsburgh railroad;

thence south fifteen degrees and eight minutes west fifteen hundred and ninety-seven and three-tenths feet along said right of way of the Erie and Pittsburgh railroad to a point on the line of the lands of Eisenhart's heirs; thence along the line of the lands of Eisenhart's heirs north seventy-nine degrees and seventeen minutes west two thousand four hundred and eighty-one and five-tenths feet to a peg on the line of lands of Reuben Christ-
126 man; thence along the line of lands of Reuben Christman and Daniel Knappenberger north one degree and twenty-eight minutes east nine hundred and sixty-four feet to the place of beginning, excepting the following lots, which have been conveyed by the said company out of the foregoing described premises, to wit: Lots numbered 69, 70, 71, and 72, conveyed to P. Jones; lots numbered 73, 74, 75, 76, 77, and 78, conveyed to J. H. De Garmo; lots numbered 127, 128, 129, 130, and 131, conveyed to P. Jones; lots numbered 132 and 133, conveyed to C. J. Strachan; lots numbered 140 and 141, conveyed to Mrs. C. Arnold; lots numbered 151, 152, and 153, conveyed to Mrs. J. C. Hickey; lots numbered 144 and 145, conveyed to Mr. Derr; lots numbered 155 and 156 and 157, conveyed to James Bortz; lots numbered 158 and 159, conveyed to R. L. Lee; lots numbered 160 and 161, conveyed to J. Beal; lots numbered 172 and 173, conveyed to Taylor Bros.; lot 174, conveyed to Mr. Egan; lots numbered 178, 179, 180, and 181, conveyed to C. Arnold and wife; lot number 101, conveyed to J. L. Dunlap; lots numbered 194, 195, and 196, conveyed to J. J. De Garmo; lot number 197, conveyed to E. Berry; lots number 200 and 201, conveyed to D. Calliton; lot number 208, conveyed to H. Koontz; lot number 209, conveyed to E. H. Bortz; lot number 211, conveyed to Mrs. Gray; lot number 210, conveyed to W. A. Kreps; lot number 213, conveyed to F. Mathey; lot number 217, conveyed to John McKinley; lots numbered 244 and 246, conveyed to Valentine Beaver; lots numbered 236, conveyed to J. M. Koontz; lot number
127 239, conveyed to the Evangelical Church.

The following lots in the said tract have been sold by articles of agreement to the parties hereinafter named: Lot number 175, to John McAndrew; lot number 245, to P. Mathey; lot number 228, to Edward Fisher; lot number 232, to M. Beil, on all of which lots there are balances of unpaid purchase-money.

Lot number 198 has been leased to R. H. Libby with an option of purchase.

On lots number 176 [and] 177 there is erected and belonging to the defendant company a one and a half story dwelling-house, sixteen by twenty-four feet, with an addition fourteen by fourteen feet, with out-buildings.

On lots 202 and 203 there are erected and belonging to the defendant company a two-story dwelling-house, eighteen by twenty-eight feet, with an addition fourteen by sixteen feet, and out-buildings, including a stable twenty by thirty feet.

The tract of land described in section "C," paragraph three, is held by J. H. Devereux in trust for the said defendant company.

In addition to the property hereinbefore described the said de-

fendant company owns a large amount of personal property which cannot be accurately inventoried because the same is constantly changing, and which said property consists, among other things, of the following:

(1.) Tools and materials in the track department, such as
128 axes, saws, picks, mattox, shovels, tamping-bars, gauges, levels, wrenches and wheelbarrows, lanterns and spike-hammers.

(2.) Machinery in shops at Shenango, such as engine and boiler, planer, lathes, presses, dies, bolt-cutters, &c.

(3.) Materials and supplies at Shenango, such as wheels, axles, buffers, machine-nuts, wrought washers, bolts, brass trimmings, locomotive and car springs, lumber, gas-fixtures, plates, painters' material; engine-house tools, machine-shop tools, and car-shop tools.

(4.) Station furniture in the different stations of the defendant company, such as desks, copying-presses, chairs, stoves, safes, ticket-cases, scales, trucks, and station-books and blanks, and station benches or seats.

129 And now, June 12, 1886, within bill filed by leave of court. By the court:

Amended Bill in Equity.

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN M. SHEDD, Plaintiff by substitution in place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased (who was substituted as Plaintiff in this cause for John H. Devereux, a Citizen of Ohio, residing in the city of Cleveland, in that State, now Deceased), as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain. No. 25.

Filed June 12, 1886.

H. D. GAMBLE, *Cl'k.*

DUNNING & EDSALL,
For Plaintiff.

130 In the Circuit Court of the United States for the Western District of Pennsylvania, Sitting in Equity. May Term, 1884.

JOHN M. SHEDD, Trustee,
versus
THE SHENANGO & ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 25.

To the honorable the judges of said court:

Henry Rawle, trustee, one of the defendants herein, brings this his cross-bill against John H. Devereux, trustee; The Shenango & Allegheny Railroad Company, a corporation of the State of Pennsylvania; Thomas Powell Fowler, receiver of said Shenango & Allegheny Railroad Company; The Bristol and South Wales Railway Wagon Company, Limited; The Union Rolling Stock Company, Limited, and William A. Adams; and, humbly complaining unto this court, showeth as follows:

1. To the above number and term there is already pending in this honorable court a bill in equity, wherein John M. Shedd
131 is plaintiff and The Shenango & Allegheny Railroad Company; Henry Rawle, trustee; Thomas P. Fowler, receiver of the Shenango & Allegheny Railroad Company; The Bristol and South Wales Railway Wagon Company, Limited; The Union Rolling Stock Company, Limited, and William A. Adams are defendants, wherein the plaintiff, in substance, alleges that he is a trustee under a certain mortgage or deed of trust, made by said Shenango & Allegheny Railroad Company to him to secure the payment of the principal and interest of certain bonds of the Shenango & Allegheny Railroad Company, issued under a certain mortgage or deed of trust, and that a number of said bonds are now outstanding and unpaid.

That a large amount of interest is overdue and unpaid on said bonds, and that under the terms of the said mortgage the entire amount of bonds outstanding and the interest thereon has become due and payable, and that the said trustee is entitled to proceed and foreclose said mortgage and sell the said property.

The said bill further alleges that disputes have arisen between your orator, as trustee under the first mortgage, and the said trustee, under the mortgage made to him, and that there are controversies between them as to the extent of the lien of said respective mortgages.

That the said bill was originally filed by John H. Devereux, but the said Devereux having died the said John M. Shedd was
132 substituted in his place. This bill this defendant has answered, and the cause is still pending and *understood* in this honorable court. On March 15, 1884, Charles I. Young and Henry W. Tyler, citizens of Great Britain, filed a bill in equity in this honorable court to March term, 1884, No. 17, against the said railroad company, praying, among other things, the appointment of a receiver to take possession of all the property of the said company, and upon a hearing thereof, on March 15, 1884, this honorable court ap-

pointed Thomas Powell Fowler receiver of the said railroad company and of all its property, and the said receiver took possession thereof under a decree of this court, and is still in possession of the same.

2. The Shenango & Allegheny Valley Railroad Company is a corporation of the State of Pennsylvania, duly organized and incorporated in accordance with the laws of the said State. The main line of said road extends from Greenville, in Mercer county, to Hilliard's, Butler county, Pennsylvania.

The complainant is informed and believes that the company also operates and partly owns the following branches:

South branch and sidings	5.1	miles.
Bull Valley branch and sidings	3.2	"
Coalton branch, partly	3.2	"
Filer and Reed branches, partly owned by the company	10.7	"
Making a total of	22.2	miles.

133 And that the rolling-stock now owned by the said company is as follows:

Locomotives	9
Passenger coaches	5
Combination cars, passenger and baggage	2
Baggage and mail cars	1
Caboose cars	4
Box-cars	5
Dump-coal cars	37
Gondola cars	131
Flat cars	14
Tool-cars	1
Derrick or wrecking car	1

One hundred and five of these gondola cars are held under a car-trust contract.

The real estate owned by said company is situate in the county of Mercer, in the State of Pennsylvania. The property, real and personal, owned and held by said company is more accurately and specifically set out and described in Schedule B, made part of the original bill in this case.

3. The said railroad company, being duly authorized and empowered so to do, did make and duly execute, under its common corporate seal, its mortgage or deed of trust, bearing date April 1st, 1869, to your orator as trustee to secure the payment of the bonds of said company, aggregating in amount the sum of one
134 million ($1,000,000) dollars, with coupons or interest warrants thereto attached, for the payment of interest at the rate of seven per cent. per annum, payable semi-annually on the first days of October and April, in cash, and every year until the maturity of said bonds.

The said mortgage was duly executed and delivered to your orator on or before the sixth day of April, 1868, and the trust was accepted by your orator, and the said mortgage was duly recorded in the office of the recorder of deeds in the county of Mercer, in the State of Pennsylvania, on the seventeenth day of April, 1869, in mortgage book C, pages 456, &c., and also in the recorder's office in the county of Butler, in the State of Pennsylvania, in mortgage book No. 3, vol. 1, page 85, the said counties of Mercer and Butler being the ones in which the said railroad and all its property and branches are located. Your orator hereto annexes an exact copy of said mortgage, and prays the same may be taken as part of this his cross-bill.

4. All the bonds secured by said mortgage aggregate in amount one million dollars, and to each of said bonds are annexed, respectively, coupons for the payment of interest at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October in each and every year. In and by said mortgage or deed of trust there was conveyed and assigned to your orator as trustee, as aforesaid, to secure the payment of the said bonds
135 and the interest thereon, all the line of railroad of the said Shenango & Allegheny Railroad Company, extending from its western terminus, at the junction of the Erie & Pittsburgh railroad, in the township of West Salem, in the county of Mercer, in the State of Pennsylvania, southeastwardly to a point at or near Bear creek, in the county of Butler, in said State, comprising the line of said railroad and including all the railway, rights of way, depot grounds, and other land owned or held by said company; all its extensions, tracks, branches, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-houses, car-houses freight-houses, warehouses, water-tanks, and other buildings, and all machine-shops and other shops, and all locomotives, tenders, cars, and other rolling-stock and equipments, and all machinery, tools, implements, and material for constructing, operating, or repairing of the said railroads, and any part thereof; and also all equipments, lateral or branch roads and extensions then held or thereafter to be acquired, with their appurtenances, and all railroads and branches and sidings thereof thereafter to be constructed, and the franchises connected with or relating to the said railroad company, and all corporate rights and franchises of the said company, and all corporate or other franchises which might thereafter be acquired or exercised by the said company, with all tenements and appurtenances thereunto belonging or in anywise appertaining; all of which
136 said property is situate within the western district of Pennsylvania and within the jurisdiction of this honorable court.

5. Your orator avers that by reason of the facts hereinbefore recited, and the delivery and the recording of the said mortgage or deed of trust to your orator, that the same became, in April, 1869, and ever since has been and is now, a valid first lien, prior to all other liens and encumbrances, upon all and singular the railroad from Greenville to Hilliard's, and the property, real and personal and mixed, of the said railroad company, and its franchises, side

tracks, and branches, to secure the payment of the said bond, aggregating one million dollars, and the interest thereon, all of which said bonds are outstanding and unpaid.

6. And your orator further shows that among other things it is provided in the said mortgage or deed of trust that in case default should be made by the said Shenango & Allegheny Railroad Company in the payment of any interest on any of the said bonds covered by said mortgage, and said default should continue for a period of six months, that it should be lawful for your orator, as trustee, to enter in and upon or take possession of the mortgaged property, and that it would also be lawful for him to enter and sell the said property upon the written request of the holders of one-half of the mortgage bonds then unpaid; and it was further provided
137 in said mortgage or deed of trust that on like default being made it should be the duty of your orator, as trustee, to exercise the power of entry or power of sale, or both; or take appropriate legal proceedings to enforce the rights of the bondholders under the mortgage to your orator upon a request in writing by the holders of not less than three hundred thousand dollars of said bonds, and apply the proceeds, over costs and expenses, to the payment of the principal and interest of said bonds.

7. Prior to the appointment of the receiver aforesaid the said railroad company did, at different times, default in the payment of interest on said bond, and, in addition thereto, since the appointment of said receiver, and on the first day of October, 1884, the said company wholly neglected and failed and refused, on demand, to pay any portion of the interest due on the said first day of October, 1884, amounting in the aggregate to the sum of thirty-five thousand dollars. The said railroad company wholly neglected to pay or provide for the payment of any portion of said interest on the first day of October, 1884, at the National Bank of Commerce in New York, or elsewhere; and this default and neglect has continued for more than six months and continues to the present time. The said railroad company has not paid the interest due on the first day of April, 1885, amounting in the aggregate to the sum of thirty-five thousand dollars, nor the interest due on the first day of October,
1885, amounting in the aggregate to the further sum of thirty-
138 five thousand dollars, so that in interest alone on said first mortgage there is now overdue and unpaid the sum of one hundred and five thousand dollars.

8. In accordance with the terms of the said mortgage, holders of bonds secured by the said mortgage amounting to more than one-half of the bonds issued under and covered by the said mortgage, their aggregate amounting to the sum of over six hundred thousand dollars, and also holding all the interest warrants and coupons thereunto belonging and then unpaid, and especially the interest warrants due October 1st, 1884, did present their written request to your orator, as trustee, praying that he should proceed and sell, under the terms of the said mortgage, the said mortgaged property. In accordance therewith your orator, on the 6th day of June, 1885, filed his petition in this honorable court praying for leave to proceed

and sell under the power of sale contained in said mortgage, notwithstanding the possession of the said Thomas Powell Fowler as receiver. This application was denied by this honorable court, and your orator was thereupon powerless to proceed with or make the sale.

9. Your orator further shows that the holders of the bonds secured by said mortgage, amounting to more than three hundred thousand dollars of said bonds in the aggregate, and also being the
139 owners and holders of the coupons belonging to all of the said bonds, have also presented to your orator their written request that your orator, as trustee as aforesaid, should immediiately institute proceedings in equity for the collection of the principal and interest of the bonds and the foreclosure of the said mortgage or deed of trust, and that said written request was made subsequent to the 1st day of April, 1885, and prior to the filing of the amended bill in equity in this cause.

Your orator further shows unto this honorable court that the said railroad company is insolvent, and that instead of being in better condition financially it is monthly becoming more involved as it is at present operated and managed, and it is greatly to the interest of all the creditors and stockholders and bondholders of said railroad company that the same should be sold.

10. The Bristol & South Wales Railway Wagon Company, Limited, and the Union Rolling Stock Company, Limited, and William A. Adams have, under authority of this court to the receiver given so to do, settled and compromised their difference with the said defendant company, and their present relations are that the said defendants have a car-trust contract with said defendant company for one hundred and five gondola coal-cars, and though your orator's mortgage and deed of trust is a lien thereon, yet it is subject to the contract rights of the said Union Rolling Stock Company,
140 Limited, the said Bristol & South Wales Railway Wagon Company, Limited, and the said William A. Adams.

Wherefore your orator needs equitable relief and humbly prays—

First. That this honorable court will order and decree that the said Shenango & Allegheny Railroad Company shall pay to your orator, together with his lawful costs, the entire interest now due and unpaid, as particularly set forth in this bill, and the said payment be made by a short day, to be fixed by this court, and that in default thereof that the said Shenango & Allegheny Railroad Company, and all persons whatsoever claiming the said property—real, personal, and mixed—including the franchises covered by the said mortgage, or any part or parcel thereof, shall be absolutely barred and foreclosed of and from all equity of redemption or claim of, in, to, or out of said property for any portion thereof, and that the said property may be sold under the order and decree of this honorable court.

Second. That this honorable court will adjudge and decree that the said railroad company, defendant, has wholly neglected and refused, on demand made, to pay any portion of the interest due on the first-mortgage bond on the first day of October, 1884, and that

it likewise failed, on demand made, to pay any interest due on the said first-mortgage bond on the said first day of April, 1885,
141 and that it has likewise failed, on like demand, to pay any interest due on said first-mortgage bond on the first day of October, 1885; that said interest now overdue and unpaid on said first-mortgage bonds aggregates the sum of one hundred and five thousand dollars.

Third. That your honors will further adjudge and decree that said Shenango & Allegheny Railroad Company did make default in the payment of all interest due on all of the said first-mortgage bonds covered by the said mortgage or deed of trust to your orator, and that said default has continued for a period of more than six months, and that said default having been made and continued, as aforesaid, for more than six months, the holders of one-half of the mortgage bonds then unpaid did present to your orator their written request that he, as trustee under the said mortgage or deed of trust, should proceed and dispose of all the mortgaged property, real, personal, and mixed; and that you will likewise adjudge and decree that the said railroad company did make default in the payment of all interest on all of its said bonds due on October 1st, 1884, and also due on April 1st, 1885, and that the said default has continued for a period of more than six months, and that the holder of bonds under the said mortgage to your said orator, as trustee, aggregating in amount more than three hundred thousand dollars, has demanded of your orator as trustee, as aforesaid, that he should proceed and take the proper step in equity to compel the
142 payment of the whole of said bonds and to foreclose the said mortgage.

Fourth. That your honorable court will also authorize and empower your orator, as trustee under said mortgage or deed of trust, as aforesaid, and in accordance with the power and authority to him given by the said mortgage or deed of trust, to sell all and singular the property, real, personal, and mixed, including the franchises of said defendant company, covered by the said mortgage or deed of trust, free and discharged as to every part thereof of and from all and any lien, encumbrance, or charge whatsoever, and to make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed therefor and to place the said purchaser or purchasers thereof in possession of the said property so sold, upon the execution of the said deed and the payment of the purchase-money therefor.

Fifth. That the proceeds of the said sale shall be paid into this honorable court, and be subject to its order and decree, and be distributed in accordance with the respective liens, rights, and equities of the parties claimant against the said railroad company, except that the said sale shall be upon such terms, if any, as to this honorable court may seem meet, to the effect that, in the payment of the sum bid for the same at the sale, mortgage bonds of the said company and the coupons thereon, secured as aforesaid by the mortgage to your orator, may be accepted in part payment of the same.

143 Sixth. That your orator, as trustee under the mortgage as aforesaid, shall be authorized and empowered to take possession of all the property, real, personal, and mixed, of the said defendant company, and to manage, operate, and control the same, and to collect and receive the rents, profits, and income thereof, and to apply the same for the benefit and advantage of the bondholders under the said mortgage or deed of trust made to your orator, as aforesaid.

Seventh. That this honorable court will grant unto your orator such other and further relief as to equity and justice may appertain and to your honors shall seem meet.

May it please this honorable court to grant to your orator a writ of subpœna, directed to the Shenango & Allegheny Railroad Company, Thomas P. Fowler, the Bristol and South Wales Railway Wagon Company, Limited, the Union Rolling Stock Company, Limited, and William A. Adams, commanding them and each of them, at a certain day and under a certain penalty, to be and appear before this honorable court, then and there to answer the premises, and to stand and abide such order and decree therein as to this honorable court shall seem agreeable in equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

HENRY RAWLE, *Trustee.*

144 STATE OF PENNSYLVANIA, }
Philadelphia County, } *ss:*

Personally before me came the above-named Henry Rawle, trustee as aforesaid, who, being duly sworn according to law, deposes and says that the averments set forth in the foregoing cross-bill, so far as made from his own knowledge, are true, and so far as made from information and belief he believes them to be true.

HENRY RAWLE.

Sworn and subscribed before me this 10th day of May, A. D. 1886.

[SEAL.] CHAS. B. PENROSE,
Notary Public.

And now, June 12, 1886, within cross-bill — filed by leave of court. By the court:

145 *Mortgage [of] Shenango & Allegheny Railroad Company to Henry Rawle. Stamp,* $1,000.00.

This indenture, made the first day of April, A. D. 1869, between the Shenango and Allegheny Railroad Company, of the first part, and Henry Rawle, of the city of Erie, Erie county, Pennsylvania, of the second part, witnesseth: That whereas the said party of the first part is a corporation duly formed, organized, and existing under and in pursuance of an act of the General Assembly of the Commonwealth of Pennsylvania, approved the 20th day of March, 1865,

entitled "An act to incorporate the Bear Creek Railroad Company, approved the 20th day of March, 1865, changing the name of the same, regulating the rates of fare, and fixing the termini," approved the 9th day of April, 1867, for the purpose of constructing, completing, maintaining, and operating a railroad from the point of intersection or junction with the Erie and Pittsburgh Railroad, in the township of West Salem, in the county of Mercer, southeastwardly a distance of fifty-six miles to the mouth of Bear creek, in Butler county, Pa.;

And whereas said Shenango and Allegheny Railroad Company have expended a large amount of money in grading and bridging the track of said railroad from said terminus in West Salem township to a point in Findley township, Mercer county, being a distance of twenty miles, and also purchasing and furnishing ties for
146 said road, and in the payment of said work and ties has heretofore issued its coupon mortgage bonds to an amount not exceeding one hundred thousand dollars, secured by mortgage dated April 24, 1867, to James J. Shryock, trustee, which bonds it is desirous of paying before maturity thereof;

And whereas, to enable said company to pay and cancel said bonds so issued, and also to pursue successfully said work, and also to procure iron rails, rolling-stock, and equipments for the portion of said road lying and being between the point of intersection and junction with the Erie & Pittsburgh railroad, in the township of West Salem, in the county of Mercer, a distance of twenty miles to a point in Findley township, in said county, as well as for other purposes connected with said road, as far as the same is now partially constructed, and also for the purpose of constructing and building said railroad a further distance of twenty miles southeastwardly from said point in Findley township, and furnishing the same with iron rails, rolling-stock, and equipments, the said company need and have resolved to raise money to an amount not exceeding one million of dollars, being at the rate of twenty-five thousand dollars per mile, and for that purpose the said Shenango and Allegheny Railroad Company, party of the first part, by resolution of their board of directors passed the — day of March, 1869, resolved as follows:

147 "Whereas the indebtedness of this company amounts in the aggregate to about eighty thousand dollars, consisting of coupon bonds bearing date April 24, 1867, and this company is desirous of providing for the exchange or redemption of said bonds before or at their maturity, and also completing that portion of their road, now partly constructed, from the western terminus of its junction with the Erie & Pittsburgh railroad for the distance of twenty miles southeastwardly to a point in Findley township, in Mercer county, and also constructing and completing their railroad for a further distance of twenty miles southeastwardly from said point in Findley township to a point in Butler county, and also equipping and stocking said railroad as soon as constructed and finished; therefore,

"Resolved, That for the purposes set forth and stated in the foregoing preamble, and in pursuance of authority vested by law in this

company, the president and secretary be, and they are hereby, authorized and directed to execute coupon bonds at seven per centum, free of State tax, to an amount not exceeding in the aggregate the sum of one million of dollars upon that portion of the road now constructed and to be constructed between the western terminus thereof at its junction with the Erie and Pittsburgh railroad, in West Salem township, Mercer county, and a point in Butler county, forty miles southeastwardly from said western terminus, and to be denominated the first-mortgage bond, and to be dated the
148 first day of April, 1869, and to become due the first day of April, 1889, with interest thereon at the rate of seven per cent. per annum, free from State tax, payable semi-annually on the first days of October and April in each year at the National Bank of Commerce, in the city of New York, on presentation and surrender of the coupons attached thereto, the first of said coupons to be made due and payable on the first day of October, 1869, and the last of said coupons to be made due and payable with and at the maturity of the bonds to which the said coupon is attached, and said bonds to be of the denomination [of] one thousand dollars and five hundred dollars, respectively, as directed by the board of directors of the company, and all of which said bonds shall be secured by a deed of trust or mortgage to be executed and delivered to Henry Rawle, of the city of Erie, as trustee in trust, and which deed of trust or mortgage shall convey the main line of the Shenango & Allegheny railroad, now partly constructed and to be hereafter constructed between the western terminus thereof, in the county of Mercer, at its junction with the Erie & Pittsburgh railroad, and a point in Butler county on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, rolling-stock, and things belonging to the company.

"Resolved, That five hundred thousand dollars of said bonds shall be set apart, kept, and used and sold or exchanged in and for the redemption or exchange of the present outstanding bonds of the said company at or before their maturity, and for
149 the payment of any present indebtedness of the said company, and be sold and used by the company at its option for the benefit of the road in completing and finishing and furnishing with the necessary rolling-stock and equipments the first twenty miles on said road from said western terminus, now graded and furnished with ties, which sum is equal to twenty-five thousand dollars per mile of that portion of said road now partly constructed and extending to a point in Findley township, Mercer county.

"Resolved, That the remaining five hundred thousand dollars of said coupon mortgage bonds, or so many thereof as may be required, shall be used in and for the construction, completion, and equipment of that portion of said road lying and being between said point in Findley township, the terminus of the first twenty miles, and a point in Butler county, forty miles southeastwardly from the western terminus of said road, and to be used on the monthly estimates to be made and certified to by the chief engineer of the company, who shall be appointed for that purpose, and as

fast as the work is done on said portion of the road, and no faster, and shall be furnished by the trustee upon the request and demand of the company expressed by resolution of a majority of their board of directors, and shall be used for the construction, completion, and equipment of said road as aforesaid, and for no other purpose."

150 And whereas, in pursuance of the foregoing resolutions, the said Shenango and Allegheny Railroad Company have caused to be executed bonds with interest coupons attached in the form following, to wit:

UNITED STATES OF AMERICA, *State of Pennsylvania.*

Shenango & Allegheny Railroad Company First-Mortgage Bond.

$1,000. No. —. $1,000.

The Shenango and Allegheny Railroad Company acknowledge themselves indebted to Henry Rawle in the sum of one thousand dollars, lawful money of the United States, which sum they promise to pay to said Henry Rawle, or bearer, on the first day of April, A. D. 1889, with interest at the rate of seven per cent. per annum, free of State tax, payable on the first days of October and April in each year, on the presentation and delivery of the proper coupon hereunto annexed at the National Bank of Commerce, in the city of New York. The holder hereof is secured by a mortgage, bearing even date herewith, of the line of their railroad, forty miles in length, made to Henry Rawle, trustee, which conveys all the estate, rights, liberties, and franchises of said company, including all locomotives, cars, and rolling-stock which may at any time be placed upon said road, being a first mortgage on said road and property to secure this and other bonds to be issued by said company not ex-

151 ceeding in all one million dollars.

In witness whereof the said company have caused their corporate seal to be hereunto affixed, at Meadville, in the State of Pennsylvania, and attested by their president and secretary, this first day of April, 1869.

—— ——, *President.*
—— ——, *Secretary.*

I, Henry Rawle, do certify that the foregoing bond is one of the series of bonds above named and secured to be paid by the aforesaid mortgage, which I have caused to be duly recorded in all the counties through which said road passes.

—— ——, *Trustee.*

And also other bonds of like form and effect of the denomination of five hundred dollars.

Now, this indenture witnesseth that, in consideration of the premises and one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid issued and to be issued, as herein cited and provided, and every part of the said principal

and interest as the same shall become payable, according to the tenor of the said bonds and of the coupons thereto annexed, — has granted, bargained, and sold, and by these presents do grant,
152 bargain and sell, convey and transfer, unto the said party of the second part, all and singular the continuous railroad extending from its western terminus, the junction with the Erie & Pittsburgh Railroad Company, in the township of West Salem, county of Mercer and State of Pennsylvania, southeastwardly for a distance of forty miles to a point in the county of Butler, in said State, both partially constructed and partly unfinished, and now in process of construction or hereafter to be constructed and finished between the points aforesaid, comprising the line of the said Shenango and Allegheny Railroad Company, including all the railways and rights of way, depot grounds and other lands owned or held by said company, all tracks, bridges, viaducts, culverts, fences, and other structures, all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, water tanks, and other buildings, and all machine shops and other shops held or acquired for use in connection with said railroad or the business thereof, and including all locomotives, tenders, cars, and other rolling-stock or equipments, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railroad, or any part thereof, or any of its equipments or appurtenances, whether now held or hereafter acquired, and any lateral or branch roads, with their appurtenances, that may hereafter be constructed by or come into the possession of the company along the line of the aforementioned forty miles of main line or connected therewith;
153 all of which things are hereby declared to be appurtenances and fixtures of the said railroad, and also all franchises connected with or relating to the said railroad or the construction, maintenance, or use thereof now held or hereafter acquired by the said party of the first part, and all corporate and other franchises which are now or may be hereafter possessed or exercised by the said party of the first part, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and any and every part thereof, with the appurtenances, unto the said party of the second part, and to his successor or successors in the trust hereby created and designated, and to his and their assigns to the only proper use and behoof of the said party of the second part, his successors and assigns, but nothing herein contained shall be construed to prevent said company from selling, hypothecating, or otherwise disposing of any securities received by them in payment of stock or otherwise, or any lands or other property of the company not necessary to be retained for their roadway, depot grounds, or stations, nor required for the construction
154 or convenient use of their road, nor from collecting moneys due the company on stock, subscription, or otherwise, pro-

vided they shall diligently proceed to collect and faithfully apply all such means to the furnishing and equipment of their said road and other necessary purposes of said road, the same, nevertheless, to be held in trust for the purposes hereinafter expressed, to wit:

First. Until default shall be made in the payment of the principal or interest on the said bonds or some of them, or until default shall be made in respect to something required to be done or kept by the Shenango and Allegheny Railroad Company, the said Shenango and Allegheny Railroad Company shall be suffered and permitted to possess, operate, manage, and enjoy the said railroad from said western terminus in West Salem township, Mercer county, to said point in Butler county, forty miles distant from said western terminus, including any branches as aforesaid, with the equipments and appurtenances, and to take and use the rents, incomes, profits, tolls, and issues thereof in the same manner and with the same effect as if this deed of trust or mortgage had never been made.

Second. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued or to be issued, according to the tenor of the bonds and coupons thereto annexed, or in any requirements to be done or kept by the Shenango and Allegheny Railroad Company, and if such default shall continue for the period of six months, it shall be lawful for the said trus-
155 tee or his successor, personally or by his attorneys or agents, to enter in and upon all and singular the premises hereby conveyed or intended so to be, and each and every part thereof, and to have, hold, and use the same, operating by his superintendents, managers, receivers, and servants or other attorneys and agents, the said railroad and conducting the business thereof, and making from time to time all needful repairs and replacements, alterations, additions, and improvements thereto, and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same and every part thereof, and after deducting the expenses of operating the said railroad and conducting its business and all of the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien of these presents upon the said premises or any part thereof, as well as a just compensation for their own services, to apply the moneys arising as aforesaid to the payment of interest in the order in which said interest shall have become due or shall become due ratably to the persons holding the coupons evidencing the right to such interest, and, after paying all interests which shall have become due, to apply the same to the satisfaction of the principal of the aforesaid bonds of the original and substituted issues which may be at any time unpaid ratably and without discrimination or prejudice.

Third. In case default shall be made as aforesaid and
156 shall continue as aforesaid it shall likewise be lawful for said trustee, or his successor, after entry as aforesaid, or other entry, personally, or by his attorneys or agents, to sell, or, upon the written request of at least the holders of one-half of the bonds then unpaid, said trustee shall sell and dispose of all and singular the premises

hereby conveyed or intended so to be, or so much as shall be necessary to pay and discharge the principal and interest of all such bonds as may then be due and unpaid, at public auction, in the city of New York or at the city of Meadville, in the State of Pennsylvania, or at such other place within the State in which said railroad is situated which the said trustee may designate, and at such time as he may appoint, having first given notice of the time and place of such sale by advertisement published not less than three times a week for ninety days in one or more newspapers in the city of New York, Philadelphia, Erie, and Meadville, and to adjourn the said sale from to time in his discretion, and if so adjourned to make the same at the time and place to which the same may be adjourned, and to make and deliver to the purchasers thereof good and sufficient deed or deeds in the law for the same, in fee-simple, which sale made as aforesaid shall be a perpetual bar, both in law and equity, against the party of the first part and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through, or under them, or any of them, or either of
157 them, and, after deducting from the proceeds of such sale just allowances for all expense of said sale, including attorneys, and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustee in operating or maintaining of said railroad, or in managing its business while in possession, and all payments which may have been made by him for taxes or assessments, and for charges and liens, prior to the lien of these presents on the said premises, or any part thereof, as well as compensation for his own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds of the original issue and of the subsequent issue as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid without discrimination or prejudice, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if, after the satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the same to the said Shenango and Allegheny Railroad Company, or to such other parties as may be entitled to receive the same.

And it is hereby declared that the receipt or receipts of the said trustee shall be a sufficient discharge to the purchaser or purchasers of the premises for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof or having such a re-
158 ceipt, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner howsoever be answerable for any loss in application or non-application of such purchase-money, or any part thereof, or be obliged to inquire into the necessity, expediency, or authorities of or for any such sale.

Fourth. The said Shenango & Allegheny Railroad Company shall, from time to time, and at all times hereafter, and as often as thereunto requested by the trustee, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in the law for the

better assuring unto the trustee and his successor in the trust hereby created, upon the trusts herein expressed, the railroad, appurtenances, equipments, and rolling-stock hereinbefore mentioned, or intended so to be, and all other property and things whatsoever which may be hereafter required for use in connection with the same, or any part thereof, and all franchises now held or hereafter acquired, including the franchise to be a corporation, as by the trustee or his successor, or by his counsel learned in the law, shall be reasonably advised, devised, or acquired.

Fifth. If the said Shenango and Allegheny Railroad Company shall well and truly pay the sum of money herein required to be paid by the said company, and all interest thereon, at the times and in the manner herein specified, and shall well and truly keep and perform all things herein required to be kept and performed
159 by the said company, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said party of the second part, and of his successor or successors in the trust hereby created, shall cease and determine and become void; otherwise, the same shall be and remain in full force and virtue.

Sixth. It is hereby declared and agreed that it shall be the duty and right of the trustee to exercise the power of entry hereby granted or the power of sale hereby granted, or both, or to take appropriate proceedings to enforce the rights of the bondholders under these presents only upon the requisition in writing, as hereinafter specified, as applicable to the several cases of default, in the manner and subject to the qualifications hereinafter provided, as follows, to wit:

1st. If default shall be as to interest or to principal of any bonds, either of the original or of any substituted issue, provided for by these presents, such requisition upon the said trustee shall be by holders of not less than three hundred thousand dollars in the aggregate amount of said bonds, and upon such requisition and proper indemnification by the person making the same to the trustee against cost and expense to be by them incurred, it shall be the duty of the trustee to enforce the rights of the bondholders under these presents by entry, sale, or legal proceedings as he being advised by counsel learned in law shall deem most expedient
160 for the interests of all the holders of said bonds.

2d. If default be made in respect to any other provision herein contained to be performed or kept by the said company, then and in either of such cases the requisition shall be as aforesaid, but it shall be within the discretion of the trustee to enforce or waive the right of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of said bonds, by requisition in writing, to instruct the said trustee to waive such default or to enforce their rights by reason thereof, provided that no action of the said trustee or bondholders or both in waiving such default or otherwise shall extend to or be taken to affect any subsequent default or to impair the rights resulting therefrom.

Seventh. It is mutually agreed by and between the parties hereto

that the said trustee shall be entitled to just compensation for all services which he may hereafter render in his trust to be paid by the company.

In witness whereof the party of the first part has caused its corporate seal to be affixed to these presents and the same to be attested by the signatures of the president and secretary, and the said party of the second part has hereunto set his hand and seal to testify the acceptance by the said second party of the said trust, the day and year first above written.

[Seal Shenango & Allegheny Railroad Co.]

THE SHENANGO & ALLEGHENY RAILROAD COMPANY,
By J. J. SHRYOCK, *President.*

Attest: WM. THORP, *Secretary.*

161 STATE OF PENNSYLVANIA, }
County of Crawford, } *ss:*

Be it remembered that on the 6th day of April, 1869, before me, Wm. Davis, Jr., an associate judge of the court of common pleas in and for said county and State, personally appeared James J. Shryock, president of the above-named corporation, and, being duly sworn, deposeth and saith that he was personally present at the execution of the above-written indenture or mortgage, and saw the common seal of the said corporation of "The Shenango and Allegheny Railroad Company" duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said The Shenango and Allegheny Railroad Company, and that the above-written indenture or mortgage was duly signed, sealed and delivered by — as and for the act and deed of the said "The Shenango and Allegheny Railroad Company" for the uses and purposes therein mentioned, and that the name of this deponent subscriber to the said indenture or mortgage as president of the said corporation in attestation of the due execution and delivery of the said deed is of this deponent's own proper and respective handwriting.

J. J. SHRYOCK.

Sworn and subscribed the day and year aforesaid before me. Witness my hand and seal.

WM. DAVIS, JR., *A. J.* [L. S.]

I, Henry Rawle, of the city of Erie, State of Pennsylvania, do hereby accept the trust conveyed to me in the foregoing
162 deed, and agree to discharge the same as by said deed required and empowered. Witness my hand and seal this first day of April, A. D. 1869.

HENRY RAWLE. [SEAL.]

Witness:
THOMAS M. HEMPHILL.

(Recorded in Mercer Co. April 17, 1869.)
(Recorded in Butler Co. April 23, 1869.)

163 *Cross-Bill.*

In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee,
versus
THE SHENANGO & ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 25.

Filed June 12, 1886.

H. D. GAMBLE, *Clk.*

FRANCIS RAWLE,
Philadelphia.

D. T. WATSON.

164 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* } No. 25.

To the honorable the judges of the said court.

The separate answer of the Shenango and Allegheny Railroad Company to the amended bill in equity filed by the said trustee respectfully shows:

(1.) It admits the averments in the first paragraph of the bill.

(2.) It admits the averments in the second paragraph of the bill, but says that for the property covered by the said mortgages to John H. Devereux, trustee, respondent refers to the mortgage or deed of trust itself, and, in so far as the said second paragraph correctly recites the same, it is admitted; otherwise it is denied.

(3.) In answer to the third paragraph of the bill this respondent says that it is true that since the execution and delivery of
165 the deed of trust or mortgage to the said John H. Devereux, trustee, *that* a portion of the railway of the defendant company and its branches and extensions has been constructed and equipped, but as to whether the same has become subject to the lien of the said mortgage or whether the said trust deed or mortgage is a first lien upon all the main line of the road of defendants, except only forty miles of the same, as averred in the said paragraph, this respondent refers to the provisions of the said mortgage to the said John H. Devereux, as well as to the provisions of the said mortgage to the said Henry Rawle, and says that this question is one of the matters in dispute between the trustees and the holders of the bonds under the said two mortgages.

(4.) It admits the averments in the fourth paragraph of the bill.

(5.) It admits the averments in the fifth paragraph of the bill.

(6.) In answer to the averments in the sixth paragraph of the bill this respondent says that the amount of bonds *bona fide* outstanding under the provisions of the said mortgage to the said

John H. Devereux is a matter in dispute between the trustees and the bondholders under the said mortgages to the said Rawle and the said Devereux, and this respondent is not able to definitely answer in reference thereto.

(7.) The averments in the seventh paragraph of the bill
166 are admitted.

(8.) The averments in the eighth paragraph of the bill are admitted.

(9.) The averments in the ninth paragraph of the bill are admitted.

(10.) The averments in the tenth paragraph of the bill are admitted, except respondent says that whether the net revenue and income of the mortgage premises in equity belong to the said John M. Shedd, as trustee, or said Henry Rawle, as trustee, is a question in dispute which your respondent is not able to definitely answer.

(11.) In answer to the averments in the eleventh paragraph of the bill this respondent says that it is true that the disputes and controversies therein stated do exist between the trustees and the bondholders under the mortgages to the said Henry Rawle and also under the mortgage to the said John H. Devereux.

(12.) This respondent admits the averments in the twelfth paragraph of the bill, except those in reference to the Bristol and South Wales Railway Wagon Company (Limited), the Union Rolling Stock Company (Limited), and W. A. Adams, and says that the claim of the said respective parties for cars have been compromised and settled under the authority and order of this
167 honorable court.

(13.) The averments in the thirteenth paragraph of the bill are admitted.

This respondent joins in the prayer of the said bill in so far as the same prays for sale or authority to the trustee to sell the property, real, personal, or mixed, of this defendant company.

THE SHENANGO & ALLEGHENY R. R. CO.,
By J. T. BLAIR, *Pres't.*

Attest:
[SEAL.] P. E. McCRAY, *Secretary.*

168 *Answer of Shenango and Allegheny Railroad Company to Amended Bill of John M. Shedd, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN M. SHEDD, Trustee,
vs. } 25.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.*

Filed June 18, 1886.

H. D. GAMBLE, *Clk.*

169 The Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M SHEDD, Trustee,
vs. No. 25.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.*

To the honorable the judges of the said court:

The separate answer of the Shenango and Allegheny Railroad Company to the cross-bill filed at this number and term of this honorable court by Henry Rawle, trustee, respectfully shows:

(1.) The averments in the first paragraph of the bill are admitted.

(2.) The averments in the second paragraph of the bill are admitted.

(3.) The averments in the third paragraph of the bill are admitted.

(4.) In answer to the averments in the fourth paragraph of the bill this respondent refers to the provisions of the mortgage
170 or deed of trust made to the said Henry Rawle, trustee, and a copy of which is annexed to the cross-bill. In so far as said paragraph correctly recites the provisions of the said mortgage it is admitted; otherwise denied; and it is admitted that the bonds secured by the mortgage aggregate in amount, at their face value, one million dollars, and to each of said bonds are annexed interest warrants or coupons for the payment of interest at the rate of seven per cent. per annum, payable semi-annually.

(5.) In answer to averments of the fifth paragraph of the bill this respondent says that the extent of the lien of the said mortgage or deed of trust given by respondent to the said Henry Rawle, trustee, is one of the matters in controversy between the trustees and bondholders claiming under the mortgage to the said Henry Rawle, trustee, and also those claiming under the mortgage to John H. Devereux, trustee, and that to the averments in said fifth paragraph respondent cannot definitely answer.

(6.) The averments in the sixth paragraph of the bill are admitted.

(7.) The averments in the seventh paragraph of the bill are admitted, except that this respondent says that the exact amount of interest overdue and unpaid is one of the matters in contro-
171 versy between the trustees and the bondholders claiming under the Rawle mortgage, and also under the Devereux mortgage, and, in so far as this paragraph recites that there is due one hundred and five thousand dollars of interest, respondent cannot definitely answer the same.

(8.) The averments in the eighth paragraph of the bill are admitted.

(9.) The averments in the ninth paragraph of the bill are admitted, and as to the averment in said paragraph that the said railroad is monthly becoming more involved as it is at present operated and managed, this defendant, further answering, saith that the receiver

of the road is managing the same with all fidelity and care, and that the financial condition of the road is due to causes wholly beyond his control.

(10.) The averments in the tenth paragraph of the bill are admitted.

This respondent joins in the prayer of the said cross-bill in so far as the same prays for a sale under the order of this court, and also for a sale by the said Henry Rawle, trustee, under the power given in said mortgage, of all the property, real, personal, and mixed, owned or belonging to the defendant company.

THE SHENANGO & ALLEGHENY R. R. CO.,
By J. T. BLAIR, *Pres't.*

Attest:
[SEAL.] P. E. McCRAY, *Secretary.*

172 *Answer [of] Shenango and Allegheny Railroad Company to Cross-bill of Henry Rawle, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

JOHN M. SHEDD, Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, *et al.* } 25.

Filed June 18, 1886.

H. D. GAMBLE, *Clk.*

173 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN H. DEVEREUX, a Citizen of Ohio, Trustee, Plaintiff,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, Henry Rawle, Trustee; Thomas Powell Fowler, Receiver; The Bristol and South Wales Railway Company, Limited, and William A. Adams, *et al.*, Defendants. } No. 25.

To the honorable, the judges of the said court:

The separate answer of Henry Rawle, trustee, to the amended bill of complaint of the said plaintiff, respectfully shows:

First. The averments of the first paragraph of the bill are admitted.

Second. In answer to the averments of the second paragraph of the bill, this defendant says that it is true that on or about July 1st, 1877, the said defendant, The Shenango and Allegheny Railroad Company, did duly execute and deliver to the said John
174 H. Devereux, trustee, a certain mortgage or deed of trust, but of the terms thereof and the property purporting to be embraced therein, and all the provisions thereof, that said defendant refers to the said mortgage or deed of trust, a true copy of which he

admits is annexed to the bill as Exhibit "A." In so far as the second paragraph of the bill correctly recites the said mortgage, it is admitted; otherwise it is denied.

Third. It is admitted that since the execution and delivery of the said mortgage or deed of trust to the said Devereux a portion of the railway of the said defendant company and its branches and extension then remaining unbuilt has been constructed and equipped, and has become subject to the lien of the said trust deed or mortgage; but this defendant denies that the said Devereux deed of trust or mortgage is a first lien upon all the main line of road, except only forty miles of the said main line extending southeastwardly from its junction with the Erie and Pittsburgh Railroad at Shenango, and this defendant denies that the said Devereux mortgage or deed of trust is a first lien upon all the lateral branches of said railroad company.

Defendant admits that the whole line of said railroad, including branches, is about seventy-six miles in length, and he says that the mortgage or deed of trust made to this defendant, as trustee,
175 is a valid first lien upon all of the same, and that the said Devereux mortgage or deed of trust is a second lien only thereon and subject to the lien of the said mortgage or deed or trust to this defendant.

Fourth. This defendant admits the averments in the fourth paragraph of the bill.

Fifth. This defendant admits the averments in the fifth paragraph of the bill.

Sixth. This defendant has no knowledge or means of knowledge of the truth of the averments in the sixth paragraph of the bill, and he cannot make any answer thereto; and in so far as the same are material he prays that the plaintiff be put upon proof of the same.

Seventh. This defendant admits the averments in the seventh paragraph of the bill.

Eighth. This defendant admits the averments in the eighth paragraph of the bill.

Ninth. This defendant admits the averments in the ninth paragraph of the bill.

Tenth. This defendant admits that the net revenues of
176 said railroad company derived from the premises mortgaged to the said Devereux in and by said deed of trust or mortgage have been insufficient to pay the interest on the outstanding bonds secured by the said Devereux mortgage, and that they will continue to be inadequate to pay the interest due and to accrue thereon in the way in which the said company is now managed; but this defendant denies that the net revenue and income of the mortgaged premises in equity belong to the said Devereux as trustee, and says that, although under the said Devereux deed of trust the said Devereux is entitled to the possession and use of said premises, and to collect, receive, and apply the net income thereof, yet said possession, receipt, and collection is subject to the prior right thereto

of this defendant as trustee under the mortgage made to him by the said defendant company.

The other averments in the tenth paragraph of the bill are admitted.

Eleventh. This defendant admits that there are disputes between himself as trustee under the first mortgage or deed of trust and the bondholders thereunder and certain alleged bondholders under the said Devereux mortgage or deed of trust, and that the nature of the said disputes is set forth in the said eleventh paragraph of the bill, but in addition thereto this defendant here avers that said first mortgage given to him is a valid lien upon all the proporty,
177 real and peasonal, of every kind now owned by the Shenango and Allegheny Railroad Company, and that in all respects the said Devereux mortgage or deed of trust is subject and subsequent in lien thereto.

And this defendant further avers, on information and belief, that many of the bonds alleged to be outstanding under said second mortgage given to the complainant, and especially those of the bonds alleged in the bill to be held by certain banks, were fraudulently and improperly issued, and are not valid outstanding obligagations of the Shenango and Allegheny Railroad Company.

This defendant denies that any of the bonds secured by the mortgage given to him as trustee were fraudulently issued, but, on the contrary, avers that all the bonds issued under the said first mortgage were issued for full value, and are now in the hands of *bona fide* purchasers for value; and that the entire amount of the said bonds, viz., $1,000,000, with all interest that has accrued thereon and is now unpaid, is due and owing by the said Shenango and Allegheny Railroad Company to the holders thereof.

Twelfth. This defendant admits the averments of the twelfth paragraph of the bill as to the pendency of proceedings in equity in this honorable court to May term, 1884, No. 17, and also the appointment of Thomas Powell Fowler as receiver under the said pro-
178 ceedings; and he also admits that under the order of this court receivers' certificates have been issued by him, which are still outstanding and unpaid, but he has no information as to the exact amount of such certificates. But he denies that the said receivers' certificates, or any of them, are a lien prior to the mortgage given to him as trustee as aforesaid, and avers that the said mortgage is prior in lien to all such receivers' certificates, and all costs and charges and expenses incurred in the management of said property by the said receiver, and to all liens whatever thereon.

The averments of the twelfth paragraph of the bill in relation to the Bristol and South Wales Railway Wagon Company, Limited, the Union Rolling-stock Company, Limited, and William A. Adams, as to the contracts for cars, are admitted.

Thirteenth. The averments of the thirteenth paragraph of the bill are admitted, except that this defendant denies that the appointment of a receiver would be for the benefit and advantage of anybody connected with this case.

Wherefore, having fully answered the averments in the bill of complaint, this defendant joins in so much of the prayer thereof as will secure a speedy sale of all the property of the defendant, The Shenango and Allegheny Railroad Company, real, personal, and mixed, including its franchises.

HENRY RAWLE, *Trustee.*

FRANCIS RAWLE, *Solicitor.*

179 STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

Personally before me came Henry Rawle, the above-named trustee, who, being by me duly sworn according to law, deposes and says that the statements set forth in the foregoing answer, so far as made from his own knowledge, are true, and so far as made upon information or belief he believes them to be true.

HENRY RAWLE.

Sworn and subscribed before me this fifth day of March, A. D. 1886.

[SEAL.] CHAS. B. PENROSE,
Notary Public.

180 *Answer of Henry Rawle, Trustee, to John M. Shedd's Amended Bill.*

May Term, 1884.

JOHN M. SHEDD, Trustee, }
vs. } No. 25.
THE SHENANGO AND ALLEGHENY RAILROAD CO. *et al.* }

Filed June 18th, 1886.

H. D. GAMBLE.

181 The Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee, }
vs. } No. 25.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* }

To the honorable the judges of the said court.

The separate answer of Thomas Powell Fowler, receiver, to the averments in the amended bill of complaint contained respectfully shows:

(1.) That heretofore, to wit; on the 15th day of March, 1884, in a certain cause then and now pending in this court, at No. 17, May term, 1884, in equity, wherein Charles L. Young and Henry W. Tyler are complainants and the said The Shenango and Allegheny Railroad Company is defendant *that* your respondent was duly appointed by this honorable court receiver of the said railroad company and of all its property, real, personal, and mixed; that he

qualified as such receiver, and has entered upon and performed the duties of his office as such receiver ever since, and that he is still in charge of the said property as receiver of this honorable court.

182 (2.) That while he has no personal knowledge of the various averments in the bill contained, he believes that the statements contained in the different paragraphs thereof are correct, except as follows: That in how far the said deed of trust or mortgage to John H. Devereux is a first lien upon the property of the defendant company, and in how far the mortgage or deed of trust to the said Henry Rawle, trustee, is a first lien upon the property of the said defendant company, and in how far the said John M. Shedd, trustee, is entitled to the possession and the net revenue and income of the mortgaged premises in equity, this respondent has no knowledge, and cannot make answer thereto. And while respondent believes that disputes and controversies, as stated in the eleventh paragraph of the said amended bill, are correct in substance, he has no personal knowledge in reference thereto. And respondent says that he has no personal knowledge as to how many of the said outstanding bonds under the said Devereux mortgage were issued by the defendant company in conformity with the said Devereux trust deed or mortgage.

(3.) Respondent respectfully suggests to this honorable court that from the knowledge he has of the condition of the said railroad company and its property and finances *that* he verily believes it would be for the best interest of all parties concerned, including the stockholders and bondholders and creditors of the said rail-

183 road company; that all its property should be sold as soon as possible, and in such manner as to give the purchasers thereof an unencumbered title thereto.

And defendant submits himself to the jurisdiction and orders and decrees of the court in the premises.

WAYNE MacVEAGH, *For Deft.*

STATE OF NEW YORK, }
City & County of New York, } *ss.:*

Thomas P. Fowler, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and so far as the same are stated upon information and belief are believed by him to be true.

THOMAS P. FOWLER.

Sworn and subscribed to before me, a notary public in and for said city & county, this 16th day of June, A. D. 1886.

184 *Answer of Thos. Powell Fowler, Receiver, to Amended Bill. Original.*

Circuit Court of the United States, Western District of Pennsylvania.

JOHN M. SHEDD, Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.*

Filed June 18th, 1886.

H. D. GAMBLE, *Clk.*

185 The Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* } No. 25.

To the honorable the judges of the said court:

The separate answer of Thomas Powell Fowler, receiver, to the cross-bill at the above number and term of this honorable court by Henry Rawle, trustee, respectfully shows:

(1.) That heretofore, to wit, on the 15th day of March, 1884, in a certain cause then and now pending in this court, at No. 17, May term, 1884, in equity, wherein Charles L. Young and Henry W. Tyler are complainants, and the said The Shenango and Allegheny Railroad Company is defendant, *that* your respondent was duly appointed by this honorable court receiver of the said railroad company and of all its property—real, personal, and mixed; that he qualified [as] such receiver and entered upon and performed the duties of his office as such receiver ever since, and that he is still in charge of the said property as receiver of this honorable court; that

186 in pursuance of orders of this court this respondent has issued receivers' certificates for one hundred and fifty-five thousand eight hundred and forty-nine dollars and eighty-seven cents, and applied the money received therefor as by the said orders directed; said certificates are all outstanding and unpaid, and this respondent submits that they constitute the first lien on all the property in the charge of the receiver.

(2.) That while he has no personal knowledge as to the averments in said cross-bill he believes them to be correct, except that he is not able to answer as to how far the said mortgage or deed of trust to the said Henry Rawle, trustee, is a first lien on the property of the defendant company, and how far the said mortgage to the said John H. Devereux, trustee, is a first lien thereon, nor is he able to answer as to how many of the outstanding bonds under the said Rawle mortgage are *bona fide* issued or the number held by *bona fide* holders for value; but he says that these matters are among those in dispute between those claiming under the said Devereux mortgage and those claiming under the said Rawle mortgage, and except

also that this respondent denies every averment in said bill, by implication or otherwise, that the financial condition of the sail railroad is due in any way whatsoever to any want of care or skill on his part in his management of the same as receiver, but this respondent avers that he has managed and operated the said road as receiver with due economy, care, and fidelity, and that the financial condition of the road is due to causes wholly beyond his control.

187 (3.) Respondent respectfully suggests to this honorable court that from the knowledge he has of the condition of the said railroad company and its property and finances *that* he verily believes it would be for the best interests of all parties concerned, including the stockholders and bondholders and creditors of the said railroad company, that all its property should be sold as soon as possible and in such a manner as to give the purchasers thereof an unencumbered title thereto.

And respondent submits himself to the jurisdiction and orders and decrees of the court in the premises.

WAYNE MacVEAGH, *for Def't.*

188 STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Thomas P. Fowler, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and, so far as the same are stated on information and belief, are believed by him to be true.

THOMAS P. FOWLER.

Sworn to and subscribed before me, a notary public in and for said city and county, this 16th day of June, A. D. 1886.

W. L. DUNNING,
Notary Public, N. Y. City & Co.

189 *Answer of Thos. Fowler, Receiver, to Cross-Bill.*

Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

JOHN M. SHEDD, Trustee, }
vs. } 25.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* }

Filed June 18th, 1886.

190 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee,
vs. No. 25.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.*

To the honorable the judges of the said court:

The separate answer of John M. Shedd to the cross-bill filed by Henry Rawle, trustee, respectfully shows:

(1st). The averments of the first paragraph of the bill are admitted.

(2nd). The averments of the first paragraph of the bill are admitted.

(3d). I admit the averments in the third paragraph of the bill, but I do not intend by this admission to admit anything in reference to the extent of the lien of the said mortgage to the said Henry Rawle inconsistent with the averments in the amended bill of complaint filed by John H. Devereux, trustee, in this case.

(4th.) I admit, in answer to the averments in the fourth and
191 fifth paragraphs of the bill, that the bonds secured by the said mortgage to the said Henry Rawle amount at their face value to one million ($1,000,000) dollars, and that coupons or interest warrants for the payment of interest at the rate of seven (7) per cent. per annum, semi-annually, on the first days of April and October of each year, are thereto attached; but I deny, on information and belief, that the face value of said bonds, with interest, is due, and I aver, on information and belief, that much less than the face value of the said bonds (but the precise amount I am unable to state) is due thereon, and I deny that the said mortgage to the said Henry Rawle constitutes a first lien prior to all other liens on all the railroad from Greenville to Hilliard's, and on the property, real, personal, and mixed, of the said railroad company, its franchises, and branches, but, on the contrary thereof, I aver that the said mortgage is only a first lien upon forty (40) miles of the main line of the Shenango and Allegheny Company's line extending eastwardly from its junction with the Erie and Pittsburgh railroad at Shenango.

In so far as the fourth paragraph of the said bill correctly recites the provisions of the said mortgage to the said Henry Rawle, it is admitted; otherwise denied.

(5th.) I admit the averments in the sixth paragraph of the bill.

192 (6th.) I admit the averments in the seventh paragraph of the bill, except that I deny that the amount of interest overdue and unpaid aggregates the sum of one hundred and five thousand ($105,000) dollars, but say that the real default in interest would amount to much less than the sum of thirty-five thousand ($35,000) dollars on the first days of April and October, as specified in said paragraph.

(7th.) I admit the averments in the eighth paragraph of the bill.

(8th.) I admit the averments in the ninth paragraph of the bill, and *that* I deny that the said railroad is monthly becoming more

involved as at present operated and managed, if by said averment it is meant to be asserted or implied, that the road is not being well managed by the present receiver.

(9th.) I admit the averments in the tenth paragraph of the bill, except that I deny that the mortgage to the said Henry Rawle, trustee, is a lien upon the cars specified in said paragraph.

Wherefore, having fully answered the averments in this bill of complaint contained, I join in the prayer of the said bill requesting that a sale of all and singular the property, real, personal, and mixed, of the said railroad company shall be made, and that the said Henry Rawle, trustee, shall be authorized and empowered to make
193 sale of the said property under the power of sale to him given in the said mortgage, but that such order and permission for sale shall be coupled with a like order and permission to this respondent under the bill filed by him as trustee in this case.

DUNNING & EDSALL,
Solicitors for John M. Shedd, Trustee.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

John M. Shedd, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and, so far as the same are stated on information and belief, — are believed by him to be true.

JOHN M. SHEDD.

Sworn to and subscribed before me, a notary public in and for said city and county, this 16th day of June, A. D. 1886.

[SEAL.] J. ADRIANCE BUSH,
Notary Public, N. Y. C.

194 *Answer of John M. Shedd, Trustee, to Cross-Bill of H. Rawle, Tr.*

Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

JOHN M. SHEDD, Trustee, }
vs. } No. 25.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* }

Filed June 18, 1886.

H. D. GAMBLE, *Clk.*

195 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee, }
vs. } No. 25.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY *et al.* }

And now, June 18, 1886, counsel for the plaintiff moves the court for a decree of foreclosure, including an order of sale of the prop-

erty of the defendant company, and also for a decree authorizing the said plaintiff to execute the power of sale under the deed of trust given to John H. Devereux, trustee, and of whom the said plaintiff is the regularly appointed successor.

And now, June 18th, 1886, above motion fixed for hearing on Wednesday, June 30th, 1886, at ten o'clock a. m., and notice is directed to be given to all parties in interest.

By the court:

196 *Motion for a Decree of Foreclosure, &c., and Order Fixing June 30th for Hearing.*

May Term, 1884. Equity.

JOHN M. SHEDD, Tr., *vs.* SHENANGO & ALLEGHENY RAILROAD CO. *et al.* } No. 25.

Filed June 18, 1886.

H. D. GAMBLE, *Cl.*

Cross-Bill.

197 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

HENRY RAWLE, Trustee, *vs.* THE SHENANGO & ALLEGHENY RAILROAD COMPANY *et al.* } No. 25.

And now, June 18th, 1886, counsel for Henry Rawle, trustee, *now* moves the court for a decree of foreclosure of the deed of trust & mortgage to him, the said Henry Rawle, trustee, given, and also for a decree authorizing and empowering the said Henry Rawle, trustee, under the power of sale to him given in the deed of trust, to sell the property of the defendant company.

And now, June 18th, 1886, above motion fixed for hearing on Wednesday, June 30th, 1886, at ten o'clock a. m., and notice is directed to be given to all parties in interest.

By the court:

198 *Motion for a Decree of Foreclosure, &c. Order Fixing June 30 for Hearing.*

May Term, 1884. Equity.

HENRY RAWLE, Trustee, *vs.* SHENANGO & ALLEGHENY R. R. CO. *et al.* } No. 25.

Filed June 18, 1886.

H. D. GAMBLE, *Cl.*

199 In the Circuit Court of the United States for the Western District of Pennsylvania, Sitting in Equity. May Term, 1884.

JOHN M. SHEDD, Trustee,
vs.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 25.

To the honorable the judges of said court:

The First National Bank of Cleveland, Ohio, a banking corporation duly organized under the laws of the United States regulating the formation of associations for carrying on the business of banking, and doing business at Cleveland, in the State of Ohio, to whom your honorable court granted leave to intervene *pro inter esse suo* in the above-entitled cause, in answer to the cross-bill of Henry Rawle, trustee, filed in this cause asking and praying your honorable court to authorize him, as such trustee, to take possession of all the property, real, personal, and mixed, of the said defendant company, and to manage, operate, and control the same, and to order and decree that all the bonds and interest thereon set forth in his bill are due and unpaid, and to authorize him to sell the said property,
200 free and discharged from all liens and encumbrances of all persons whatsoever, humbly unto this court showeth as follows:

First. The respondent admits the facts set forth in the first section of said cross-bill of Henry Rawle, trustee.

Second. The respondent admits the facts stated in the second section of said cross-bill, with this qualification, that the real estate owned by said company is situated in Butler county as well as in Mercer county, said State; that under its original charter the Shenango & Allegheny Railroad Company had no authority to extend its western terminus beyond the junction of its railroad with the Erie & Pittsburgh railroad at the point now called Shenango, and had no authority to construct branches.

That the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania approved the 14th day of April, A. D. 1870, P. L. 1871; page 1516; that the authority under which it constructed its several branches was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania approved the 7th day of March, A. D. 1872, P. L. 1873, page 1012, and all branches and extensions of said railroad mentioned in section second of said cross-bill were constructed under and by virtue of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of Assembly.

201 Third. This respondent admits the facts set forth in the third section of said cross-bill, except that, for want of knowledge, it denies that an exact copy of said mortgage is annexed to said cross-bill.

Fourth. The respondent denies the facts alleged in the fourth and fifth sections of said cross-bill, as therein stated and set forth, and

alleges that the said defendant company never authorized the execution and delivery to said Henry Rawle, trustee, of any mortgage which would cover, nor does the same purport to cover, any of the extensions of the main line of its railroad beyond the point contemplated, mentioned, and described in its original charter, and said company never authorized the execution of a mortgage to said Henry Rawle, trustee, to cover the several branches of the railroad afterwards constructed by it, and the said company never authorized the execution and delivery to said Henry Rawle, trustee, by the terms of which there should be conveyed to him as trustee any after-acquired property of said railroad company; that the said defendant company never authorized the execution of a mortgage to said Henry Rawle, trustee, which would convey to him all the railway, rights of way, depot grounds, and other land owned or held by said company; that the resolution of the defendant company under and by virtue of which the mortgage mentioned in said cross-bill was executed, so far as the same relates to said mortgage, was in the following words, to wit: * * * "All of which said bonds shall be secured by a deed of trust or mortgage to be
202 executed and delivered to Henry Rawle, of the city of Erie, as trustee, in trust, and which deed of trust or mortgage shall convey the main line of the Shenango & Allegheny railroad, now partly constructed and to hereafter constructed, between the western terminus thereof, in the county of Mercer, at its junction with the Erie & Pittsburgh railroad, and at a point in Butler county on said railroad forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, rolling-stock, and things belonging to the company."

Fifth. That so far as the said mortgage purports to cover more of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited the same was executed without authority, was never authorized by the said defendant company, and is void; that the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized by law and its charter to construct a railroad; that the main line of said defendant company's railroad, as extended since the execution of the said mortgage to said Henry Rawle, trustee, under and by virtue of the acts of Assembly hereinbefore mentioned, extends from Greenville, in said Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said main line on the northwest are extensions of said original main line, constructed under and by virtue of the authority conferred
203 upon said company by the aforesaid acts of Assembly; that the branches and sidings described in Schedule B attached to plaintiff's amended bill, to which respondent asks leave to refer, were constructed by virtue of power given by the aforesaid acts of Assembly amending the original act incorporating said defendant, and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

This respondent says that so far, if at all, as the officers of said railroad undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was without authority, of which want of authority said trustee and each and every of the holders of said bonds had notice, the same appearing on the face of said bonds and of said mortgage.

Sixth. The respondent denies, as set forth in section five, that said mortgage is "a valid first lien, prior to all other liens and encumbrances, upon all and singular the railroad from Greenville to Hilliard's, and the property real, personal, and mixed of the said railroad company," to any greater extent than hereinbefore set forth, or to secure the payment of said bonds, aggregating one million dollars, but it says that said bonds aggregate a much less sum.

It denies that it is said in said mortgage or that it is provided that the trustee should sell the whole of said property, but only so much of that mortgaged as should be necessary to pay the
204 interest overdue and unpaid, and says that by the terms of said mortgage said trustee was to enforce the rights of the bondholders only on the request, in writing, of the holders and owners of three hundred thousand dollars in amount thereof, and upon proper indemnification by the persons making the same to the trustee against cost and expenses to be by them incurred by entry, sale, or legal proceedings; and for want of knowledge it denies that according to the condition of said mortgage default was made as set forth in sections six and seven, or that request or indemnification has been made as therein set forth. Further, this respondent for want of knowledge, denies the facts set forth in the eighth section of said cross bill, and on the contrary alleges that it is informed and believes, and expects to be able to prove that many of the alleged owners and holders of said bonds who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage are not the *bona fide* holders for value of the bonds held by them, and that many of said alleged bonds are paid.

Seventh. The respondent is informed and believes, and expects to be able to prove, and therefore alleges that there are not outstanding any unpaid bonds aggregating one million dollars in the hands of *bona fide* holders; that many of the said bonds were sold by the officers and directors of the defendant company to themselves at a very large discount, being at less than their real value, and on more favorable terms then were given to the general public; that
205 on part of the bonds so sold to themselves they allowed themselves a discount of forty per cent.; that on the balance so sold they allowed themselves a discount of twenty per cent., and in addition gave themselves Mercer Mining & Manufacturing Company stock to the amount of forty per cent. of the bonds so sold to themselves; that on or about September, 1872, the said officers sold said Mercer Mining & Manufacturing Company stock for par, so that their bonds would cost them but forty per cent.

Since that time they have received seven (7) per cent. interest on the par value of the bonds, which would make the interest they have received for twelve years 17½ per cent. per annum.

The respondent is now unable to give the exact amounts and numbers of said bonds so acquired and held or the names of all the parties holding the same, but when aided by the process of this court upon the trial of this cause expects to be able to prove the exact amounts, numbers, and names of the holders of said bonds so obtained, which, respondent is advised and expects to be able to prove, aggregate more than six hundred thousand dollars thereof, which have not passed into the hands of *bona fide* holders for value; that the bonds so held have justly and equitably been paid and about three hundred dollars more on each thousand dollars, and respondent is advised that in law and equity the holders thereof are entitled to receive nothing more thereon.

206 Eighth. The respondent is advised by counsel and believes that the mortgage mentioned in said cross-bill and known and hereafter designated as the first mortgage is not a lien on the extension and branches and other property described in the schedule attached to plaintiff's bill, but is a lien upon only forty miles of the main line of said railroad.

That the first mortgage, so far as it purports to convey or cover more than the forty miles of the main line therein described, and its appurtenances, equipments, rolling-stock, and things belonging to said company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches and after-acquired property of said defendant company by the said first mortgage.

Ninth. The respondent adopts, as though made a part thereof, the allegations of the plaintiff in his amended bill filed May —, 1886, in regard to the terms, execution, and delivery of the mortgage dated July 1st, 1877, and asks leave to refer thereto as to the terms thereof.

That if the bonds so secured by the said mortgage dated July 1st, 1877, — respondent is the owner and holder as hereinafter stated of sixty-four bonds of one thousand dollars each, duly executed and delivered by the said railroad company to it, which bonds are dated July 1st, 1877, payable thirty years thereafter, with interest at seven per cent., payable semi-annually; to each and every of said
207 bonds *is* attached coupons or interest warrants covering each and every instalment of interest to become due thereon. Said bonds are numbered thirteen hundred and fifteen to thirteen hundred and thirty-four, inclusive, fourteen hundred and fifty-six to fourteen hundred and ninety-six, inclusive, and fifteen hundred and two to fifteen hundred and four, inclusive. The following coupons are overdue on said bonds and in default for want of payment, to wit: Those due January 1st, 1878, and those due each six months thereafter until the present time.

That respondent holds said bonds to secure the payment of the two certain promissory notes of the Shenango and Allegheny Railroad Company hereinafter fully set forth; that the Shenango and Allegheny Railroad Company made and delivered two promissory notes owned and held by this respondent, both payable to and endorsed by the Mercer Mining & Manufacturing Company, both payable sixty days after the date thereof, one for five thousand dollars, dated the 18th of February, 1884, and the other for twenty-five thousand dollars, dated the 23rd day of February, 1884; that there is due to said respondent from the Shenango and Allegheny Railroad Company upon said two notes the sum of thirty thousand dollars, with interest on twenty-five thousand dollars from the 24th day of November, 1885, and on five thousand dollars from the 24th day of November, 1885, and that the respondent is entitled to receive from the proceeds of said road the interest and principal of said bonds ratably and in proportion with all the other holders thereof
208 until its said debt is entirely paid.

Tenth. Your respondent is advised by counsel and believes that owing to the disputes existing as to the amount of the first-mortgage bonds outstanding, and the extent of the lien thereof, and the dispute as to the extent of the lien of the second-mortgage bonds, and as disputes have arisen as to the amount and validity of the receivers' certificates, *that* it is necessary, in order to protect its rights as a lien creditor, to have a court of competent jurisdiction to determine the amount of said bonds outstanding and the amount due thereon and the extent of the lien thereof, as well as the amount and the extent of the lien of said second-mortgage bonds, as well as the amount and validity of the said certificates before a sale of the said property.

And the respondent respectfully represents that if the property of the defendant company is sold before the validity and extent of said liens are judicially determined bidding will be deterred on account of the risk and uncertainty, and the property will be in great danger of being sacrificed at said sale.

Wherefore your respondent prays that an accounting may be had and taken in the premises, that the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined; that the extent of the lien of each may be judicially determined, and upon the final determination of the matters, and not before,
209 that an order of sale may be issued to sell the mortgaged premises, and for such other and further relief as may be just and equitable in the premises and to your honors shall seem meet.

And your respondent, as in duty bound, will ever pray.

ROBT B. MURRAY AND
JOHN DALZELL,
Solicitors for Respondent.

THE STATE OF OHIO, } ss:
County of Cuyahoga, }

Before me, the undersigned authority, personally appeared Henry S. Whittlesey, who, being duly sworn, says that he is the cashier

of the First National Bank of Cleveland, Ohio, the respondent within named, and that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and, so far as the same are stated on information and belief, are believed by him to be true.

H. S. WHITTLESEY.

Sworn to and subscribed before me, a notary public in and for said county, this 25th day of June, 1886.

H. CLARK FORD,
Notary Public.

210 *Answer of First National Bank of Cleveland to Cross-Bill of Henry Rawle, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

JOHN M. SHEDD, Plaintiff by substitution in place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased (who was substituted as Plaintiff in this Cause for John H. Devereux, a Citizen of Ohio, residing in the city of Cleveland, in that State, now Deceased), as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; and William A. Adams, a Citizen of the Kingdom of Great Britain. } No. 25.

Filed June 26, 1886.

H. D. GAMBLE, *Clk.*

R. B. MURRAY,
Solicitor for Respondent.

211 In the Circuit Court of the United States for the Western District of Pennsylvania, Sitting in Equity. May Term, 1884.

JOHN M. SHEDD, Trustee,

versus.

THE SHENANGO & ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 25.

To the honorable the judges of said court:

The Second National Bank of Erie, Pennsylvania, a banking corporation duly organized under the laws of the United States regulating the formation of associations for carrying on the business of

banking, and doing business at Erie, in the State of Pensylvania, to whom your honorable court granted leave to intervene *pro inter esse suo* in the above-entitled cause, in answer to the cross-bill of Henry Rawle, trustee, filed in this cause asking and praying your honorable court to authorize him as such trustee to take possession of all property, real, personal, and mixed, of said defendant company, and to manage, operate, and control the same, and to order and decree that all the bonds and interest thereon set forth in his bill are due and unpaid, and to authorize him to sell the said property free
212 and discharged from all liens and encumbrances of all persons whatsoever, humbly unto this court showeth as follows:

First. The respondent admits the facts set forth in the first section of said cross-bill of Henry Rawle, trustee.

Second. The respondent admits the facts stated in the second section of said cross-bill, with this qualification, that the real estate owned by said company is situated in Butler as well as in Mercer counties, said State; that under its original charter the Shenango & Allegheny Railroad Company had no authority to extend its western terminus beyond the junction of its railroad with the Erie & Pittsburgh railroad at the point now called Shenango, and had no authority to construct branches; that the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 14th day of April, A. D. 1870, P. L. 1871, page 1516; that the authority under which it constructed its several branches was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 7th day of March, A. D. 1872, P. L. 1873, page 1012, and all branches and extensions of said railroad mentioned in section second of said cross-bill were constructed under and by virtue of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of Assembly.

Three. This respondent admits the facts set forth in the third section of said cross-bill, except that for want of knowledge it
213 denies that an exact copy of said mortgage is annexed to said cross-bill.

Fourth. The respondent denies the facts alleged in the fourth and fifth sections of said cross-bill as therein stated and set forth, and alleges that the said defendant company never authorized the execution and delivery to said Henry Rawle, trustee, of any mortgage which would cover, nor does the same purport to cover, any of the extensions of the main line of its railroad beyond the point contemplated, mentioned, and described in its original charter; and said company never authorized the execution of a mortgage to said Henry Rawle, trustee, to cover the several branches of the railroad afterwards constructed by it; and the said company never authorized the execution and delivery to said Henry Rawle, trustee, by the the terms of which there should be conveyed to him as trustee any after-acquired property of said railroad company; that the said defendant company never authorized the execution of a mortgage to said Henry Rawle, trustee, which would convey to him all the rail-

way, rights of way, depot grounds, and other land owned or held by said company; that the resolution of the defendant company, under and by virtue of which the mortgage mentioned in said cross-bill was executed, so far as the same relates to said mortgage, was in in the following words, to wit: * * * "All of which said bonds shall be secured by a deed of trust or mortgage to be executed and delivered to Henry Rawle, of the city of Erie, as trustee in trust, and which deed of trust or mortgage shall convey the main
214 line of the Shenango & Allegheny railroad, now partly constructed and to be hereafter constructed, between the western terminus thereof, in the county of Mercer, at its junction with the Erie & Pittsburgh railroad, and at a point in Butler county on said railroad forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, rolling-stock, and things belonging to the company."

Fifth. That so far as the said mortgage purports to cover more of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited, the same was executed without authority, was never authorized by the said defendant company, and is void; that the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized by law and its charter to construct a railroad; that the main line of said defendant company's railroad as extended since the execution of the said mortgage to said Henry Rawle, trustee, under and by virtue of the acts of Assembly hereinbefore mentioned, extends from Greenville, in said Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said main line on the northwest are extensions of said original main line, constructed under and by virtue of the authority conferred upon said company by the aforesaid acts of Assembly; that the branches
215 and sidings described in Schedule B, attached to plaintiff's amended bill, to which respondent asks leave to refer, were constructed by virtue of power given by the aforesaid acts of Assembly amending the original act incorporating said defendant, and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

This respondent says that so far, if at all, as the officers of said railroad undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was without authority, of which want of authority said trustee and each and every of the holders of said bonds had notice, the same appearing on the face of said bonds and of said mortgage.

Sixth. The respondent denies, as set forth in section five, that said mortgage is "a valid first lien prior to all other liens and encumbrances upon all and singular the railroad from Greenville to Hilliard's, and the property, real, personal, and mixed, of the said railroad company" to any greater extent than hereinbefore set forth, or to secure the payment of said bonds, aggregating one million dol-

lars, but it says that said bonds aggregate a much less sum. It denies that it is said in said mortgage, or that it is provided, that the trustee should sell the whole of said property, but only so much of that mortgaged as should be necessary to pay the interest overdue and unpaid, and says that by the terms of said mortgage said trustee was to enforce the rights of the bondholders only on the re-
216 quest in writing of the holders and owners of three hundred thousand dollars in amount thereof, and upon proper indemnification by the persons making the same to the trustee against cost and expenses to be by them incurred by entry, sale, or legal proceedings; and for want of knowledge it denies that, according to the condition of said mortgage, default was made, as set forth in sections six and seven, or that request or indemnification has been made as therein set forth. Further, this respondent for want of knowledge denies the facts set forth in the eighth section of said cross-bill, and, on the contrary, alleges that it is informed and believes, and expects to be able to prove, that many of the alleged owners and holders of said bonds who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage are not *bona fide* holders for value of the bonds held by them, and that many of said alleged bonds are paid.

Seventh. The respondent [is] informed and believes, and expects to be able to prove, and therefore alleges, that there are not outstanding and unpaid bonds aggregating one million dollars in the hands of *bona fide* holders; that many of the said bonds were sold by the officers and directors of the defendant company to themselves at a very large discount, being at less than their real value, and on more favorable terms than were given to the general public; that on part of the bonds so sold to themselves they allowed
217 themselves a discount of forty per cent.; that on the balance so sold they allowed themselves a discount of twenty per cent., and, in addition, gave themselves Mercer Mining & Manufacturing Company stock to the amount of forty per cent. of the bonds so sold to themselves.

That, on or about September, 1872, the said officers sold said Mercer Mining & Manufacturing Company stock for par, so that their bonds would cost them but forty per cent.

Since that time they have received seven (7) per cent. interest on the par value of said bonds, which would make the interest they have received for twelve (12) years 17½ per cent. per annum.

The respondent is unable to give the exact amounts and numbers of said bonds so acquired and held or the names of all the parties holding the same, but, when aided by the process of this court upon the trial of this cause, expects to be able to prove the exact amounts, number, and names of the holders of said bonds so obtained, which respondent is advised and expects to be able to prove aggregate more than six hundred thousand dollars thereof, which have not passed into the hands of *bona fide* holders for value; that the bonds so held have justly and equitably been paid and about three hundred dollars more on each thousand dollars, and respondent is ad-

vised that in law and equity the holders thereof are entitled to receive nothing more thereon.

Eighth. The respondent is advised by counsel and believes that the mortgage mentioned in said cross-bill and known and
218 hereafter designated as the first mortgage is not a lien on the extensions and branches and other property described in schedule attached to plaintiff's bill, but is a lien upon only forty miles of the main line of said railroad.

That the first mortgage, so far as it purports to convey or cover more than the forty miles of the main line therein described, and its appurtenances, equipments, rolling-stock, and things belonging to said company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches and after-acquired property of said defendant company by the said first mortgage.

Ninth. The respondent adopts, as though made a part hereof, the allegations of plaintiff in his amended bill, filed May 18th, 1886, in regard to the terms, conditions, execution, and delivery of the mortgage dated July 1st, 1877, and the amounts of bonds outstanding of that issue, and asks leave to refer thereto as to the terms and conditions thereof; that of the bonds so secured by said mortgage dated July 1st, 1877, the respondent is the owner and holder, as hereinafter stated, of sixty bonds of one thousand dollars each, duly executed and delivered by the said railroad company, to wit, which bonds are dated July 1st, 1877, payable thirty years thereafter, with interest at seven (7) per cent., payable semi-annually; to each and every of said bonds is attached coupons or interest war-
219 rants, covering each and every installment of interest to become due thereon. Said bonds are numbered thirteen hundred and five to thirteen hundred and fourteen, inclusive, and thirteen hundred and eighty-one to fourteen hundred and four, inclusive, and fourteen hundred and forty-five to fourteen hundred and fifty, inclusive, and thirteen hundred and seventy-two to thirteen hundred and eighty, inclusive, and thirteen hundred and thirty-five to thirteen hundred and forty-two, inclusive. The following coupons are overdue on said bonds and in default for want of payment, to wit, those due Jan'y 1st, 1878, and those each six months thereafter until the present time. The respondent holds said bonds to secure the payment of three certain promissory notes of the Shenango & Allegheny Railroad Company, one of twenty-five thousand (25,000) dollars and two of five thousand (5,000) dollars each; that there is due to said respondent from the Shenango & Allegheny Railroad Company upon said three notes the sum of thirty-five thousand (35,000) dollars, with interest thereon from December 5th, 1885.

And that respondent is entitled to receive from the proceeds of said road the interest and principal of said bonds ratably and in proportion with all the other holders thereof until its said debt is entirely paid.

Tenth. Your respondent is advised by counsel, and believes, that, owing to the disputes existing as to the amount of the first-mortgage bonds outstanding, and the extent of the lien thereof, and the
220 dispute as to the extent of the lien of the second-mortgage bonds, and as disputes have arisen as to the amount and validity of the receivers' certificates, that it is necessary, in order to protect its rights as a lien creditor, to have a court of competent jurisdiction determine the amount of said bonds outstanding and the amount due thereon and the extent of the lien thereof, as well as the amount and validity of the the said certificates before a sale of the said properties.

And the respondent respectfully represents that if the property of the defendant company is sold before the validity and extent of said liens are judicially determined bidding will be deterred on account of the risk and uncertainty, and the property will be in great danger of being sacrificed at said sale.

Wherefore your respondent prays that an accounting may be had and taken in the premises; that the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined; that the extent of the lien of each may be judicially determined, and upon final determination of the matters, and not before, that an order of sale may be issued to sell the mortgaged premises, and for such other and further relief as may be just and equitable in the premises and to your honors shall seem meet.

And your respondent, as in duty bound, will ever pray.

ROBT B. MURRAY AND
JOHN DALZELL,
Solicitors for Respondent.

221 THE STATE OF PENNSYLVANIA, }
County of Erie, } ss:

Before me, the undersigned authority, personally appeared Joseph McCarter, who, being duly sworn, says that he is the president of the Second National Bank of Erie, Pennsylvania, the respondent within named, and that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and so far as the same are stated on information and belief, are believed by him to be true.

JOSEPH McCARTER.

Sworn to and subscribed before me, a notary public in and for said county, this 25th day of June, 1886.

[SEAL.]

WM. P. HAYES,
Notary Public.

222 *Answer of Second National [Bank] of Erie, Pennsylvania, to Cross Bill of Henry Rawle, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN M. SHEDD, Plaintiff by substitution in place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased, (who was substituted as Plaintiff in this cause for John H. Devereux, a Citizen of Ohio, residing in the City of Cleveland, in that State, now Deceased), as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain. } No. 25.

Filed June 26, 1886.

H. D. GAMBLE, *Clk.*

R. B. MURRAY,
Solicitor for Respondent.

223 In the Circuit Court of the United States for the Western District of Pennsylvania, Sitting in Equity. May Term, 1884.

JOHN M. SHEDD
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 25.

To the honorable the judges of said court:

The First National Bank of Greenville, Pennsylvania, a banking corporation duly organized under the laws of the United States regulating the formation of associations for carrying on the business of banking, and doing business at Greenville, in the State of Pennsylvania, to whom your honorable court granted leave to intervene *pro. inter esse suo* in the above-entitled cause, in answer to the cross-bill of Henry Rawle, trustee, filed in this cause, asking and praying your honorable court to authorize him as such trustee to take possession of all the property, real, personal, and mixed, of the said defendant company, and to manage, operate, and control the same, and
224 to order and decree that all the bonds and interest thereon set forth in this bill are due and unpaid, and to authorize him

to sell the said property free and discharged from all liens and encumberances of all persons whatsoever, humbly to this court showeth as follows:

First. The respondent admits the facts set forth in the first section of said cross-bill of Henry Rawle, trustee.

Second. The respondent admits the facts stated in the second section of said cross-bill, with this qualification, that the real estate owned by said company is situated in Butler as well as in Mercer county, said State; that under its original charter the Shenango & Allegheny Railroad Company had no authority to extend its western terminus beyond the junction of its railroad with the Erie & Pittsburgh railroad at the point now called Shenango, and had no authority to construct branches.

That the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 14th day of April, A. D. 1870, P. L. 1871, page 1516; that the authority under which it constructed its several branches was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 7th day of March, A. D. 1872, P. L. 1873, page 1012, and all branches and extensions of said railroad mentioned in section second of said cross-bill were constructed under and by virtue
225 of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of assembly.

Three. This respondent admits the facts set forth in the third section of said cross-bill, except that for want of knowledge it denies that an exact copy of said mortgage is annexed to said cross-bill.

Fourth. The respondent denies the facts alleged in the fourth and fifth sections of said cross-bill, as therein stated and set forth, and alleges that the said defendant company never authorized the execution and delivery to said Henry Rawle, trustee, of any mortgage which would cover, nor does the same purport to cover, any of the extensions of the main line of its railroad beyond the point contemplated, mentioned, and described in its original charter; and said company never authorized the execution of a mortgage to said Henry Rawle, trustee, to cover the several branches of the railroad afterwards constructed by it, and the said company never authorized the execution and delivery to said Henry Rawle, trustee, [of,] any after-acquired property of said railroad company; that the said defendant company never authorized the execution of a mortgage to said Henry Rawle, trustee, which would convey to him all the railway, rights of way, depot grounds, and other land owned or held by said company; that the resolution of the defendant company, under and by virtue of which the mortgage mentioned in said cross-bill was executed, so far as the same related to said mortgage, was
226 in the following words, to wit: "All of which said bonds shall be secured by a deed of trust or mortgage to be executed and delivered to Henry Rawle, of the city of Erie, as trustee in trust, and which deed of trust or mortgage shall convey the main line of the Shenango & Allegheny railroad, now partly constructed and to be hereafter constructed between the western terminus thereof, in the

county of Mercer, at its junction with the Erie & Pittsburgh railroad, and at a point in Butler county, on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, rolling-stock, and things belonging to the company."

Fifth. That so far as the said mortgage purports to cover more of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited, the same was executed without authority, was never authorized by the said defendant company, and is void; that the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized by law and its charter to construct a railroad; that the main line of said defendant company's railroad, as extended since the execution of the said mortgage to said Henry Rawle, trustee, under and by virtue of the acts of assembly hereinbefore mentioned, extends from Greenville, in said Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said
227 main line on the northwest are extensions of said original main line, constructed under and by virtue of the authority conferred upon said company by the aforesaid acts of assembly; that the branches and sidings described in Schedule B, attached to plaintiff's amended bill, to which respondent asks leave to refer, were constructed by virtue of power given by the aforesaid acts of assembly, amending the original act incorporating said defendant, and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

This respondent says that so far if at all, as the officers of said railroad undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was without authority, of which want of authority said trustee and each and every [one] of the holders of said bonds had notice, the same appearing on the face of said bonds and of said mortgage.

Sixth. The respondent denies, as set forth in section five, that said mortgage is "a valid first lien prior to all other liens and encumbrances upon all and singular the railroad from Greenville to Hilliard's, and the property, real, personal, and mixed, of the said railroad company" to any greater extent than hereinbefore set forth, or to secure the payment of said bonds, aggregating one million dollars; but it says that said bonds aggregate a much less sum. It denies that it is said in said mortgage or that it is provided that the trustee should sell the whole of said property, but only
228 so much of that mortgaged as should be necessary to pay the interest overdue and unpaid, and says by the terms of said mortgage said trustee was to enforce the rights of the bondholders, only on the request, in writing, of the holders and owners of three hundred thousand dollars in amount thereof, and upon proper indemnification by the persons making the same to the trustee against cost and expenses to be by them incurred by entry, sale, or legal

proceedings. And for want of knowledge it denies that according to the condition of said mortgage default was made, as set forth in sections six and seven, or that request or indemnification has been made as therein set forth. Further, this respondent, for want of knowledge, denies the facts set forth in the eighth section of said cross-bill, and on the contrary alleges that it is informed and believes, and expects to be able to prove, that many of the alleged owners and holders of said bonds who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage are not the *bona fide* holders for value of the bonds held by them, and that many of said alleged bonds are paid.

Seventh. The respondent is informed and believes, and expects to be able to prove, and therefore alleges, that there are not outstanding and unpaid bonds aggregating one million dollars in the hands of *bona fide* holders; that many of the said bonds were sold by
229 the officers and directors of the defendant company to themselves at a very large discount, being at less than their real value, and on more favorable terms than were given to the general public; that on part of the bonds so sold to themselves they allowed themselves a discount of forty per cent.; that on the balance so sold they allowed themselves a discount of twenty per cent., and in addition gave themselves Mercer Mining & Manufacturing Company stock to the amount of forty per cent. of the bonds so sold to themselves.

That on or about September, 1872, the said officers sold said Mercer Mining & Manufacturing Company stock for par, so that their bonds would cost them but forty per cent.

Since that time they have received seven (7) per cent. interest on the par value of said bonds, which would make the interest they have received for twelve (12) years 17½ per cent. per annum.

The respondent is now unable to give the exact amounts and numbers of said bonds so acquired and held, or the names of all the parties holding the same; but when aided by the process of this court upon the trial of this cause expects to be able to prove the exact amounts, number, and names of the holders of said bonds so obtained, which respondent is advised and expects to be able to prove aggregate more than six hundred thousand dollars thereof, which have not passed into the hands of *bona fide* holders for value; that the bonds so held have justly and equitably been paid, and
230 about three hundred dollars more on each thousand dollars; and respondent is advised that in law and equity the holders thereof are entitled to receive nothing more thereon.

Eighth. The respondent is advised by counsel and believes that the mortgage mentioned in said cross-bill, and known and hereinafter designated as the first mortgage, is not a lien on the extensions and branches and other property described in schedule attached to plaintiff's bill, but is a lien upon only forty miles of the main line of said railroad.

That the first mortgage, so far as it purports to convey or cover more than the forty miles of the main line therein described and its

appurtenances, equipments, rolling-stock, and things belonging to said company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches and after-acquired property of said defendant company by the said first mortgage.

Ninth. The respondent adopts, as though made a part hereof, the allegations of plaintiff in his amended bill, filed May, 1886, in regard to the terms, conditions, execution, and delivery of the mortgage, dated July 1st, 1877, and the amount of bonds outstanding of that issue, and asks leave to refer thereto, as to the terms and conditions thereof; that of the bonds so secured by said mortgage the
231 respondent is the owner and holder, as hereinafter stated, of twenty-two thousand dollars of said bonds secured by said second mortgage; and is also the holder of each and all of the coupons belonging thereto, and is also the holder of unpaid coupons or interest warrants of bonds secured by said first mortgage to the amount of $5,285.00.

The said respondent holds said bonds and coupons to secure the payment of two certain promissory notes of the Shenango & Allegheny Railroad Company, each for the sum of $10,000, one dated Feb'y 14th, 1884, payable thirty days after date, and the other dated Jan. 10th, 1884, payable sixty days after date.

That there is now due on said two notes the sum of twenty thousand dollars, with interest thereon from Feb'y 1st, 1886.

And this respondent is entitled to receive from the proceeds of said road the interest and principal of said bonds and coupons ratably and in proportion with all the other holders thereof until its said debt is entirely paid.

Tenth. Your respondent is advised by counsel and believes that owing to the disputes existing as to the amount of the first-mortgage bonds outstanding and the extent of the lien of the second-mortgage bonds, and as disputes have arisen as to the amount and validity of the receivers' certificates, *that* it is necessary in order to protect its rights as a lien creditor to have a court of competent jurisdiction
232 determine the amount of said bonds outstanding and the amount due thereon, and the extent of the lien thereof, as well as the amount and validity of said certificates, before the sale of said properties.

And the respondent respectfully represents that if the properties of the defendant company are sold before the validity and extent of said liens are judicially determined, bidding will be deterred on account of the risk and uncertainty, and the property will be in great danger of being sacrificed at said sale.

Wherefore your respondent prays that an accounting may be had and taken in the premises that the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined; that the extent of the lien of each may be judicially determined, and upon the final determination of these matters, and not before, that an order of sale may be issued to sell the mortgaged premises, and

for such other and further relief as may be just and equitable in the premises and to your honors shall seem meet.

And your respondent, as in duty bound, will ever pray.

ROBT B. MURRAY AND JOHN DALZELL,
Solicitors for Respondent.

233 THE STATE OF PENNSYLVANIA, } ss:
Mercer County, }

Before me, the undersigned authority, personally appeared C. R. Beatty, who, being duly sworn, says that he is the cashier of the First National Bank of Greenville, Pennsylvania, the respondent within named, and that the facts set forth in the foregoing answer, so far as the same are stated on this deponent's knowledge, are true, and so far as the same are stated on information and belief are believed by him to be true.

C. R. BEATTY,
Cashier First National Bank, Greenville, Pa.

Sworn to and subscribed before me, a notary public in and for said county, this 25th day of June, 1886.

RALPH MAXWELL, [SEAL.]
Notary Public.

234 *Answer of First National Bank of Greenville, Pa., to Cross-Bill of Henry Rawle, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN M. SHEDD, Plaintiff by substitution in place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased (who was substituted as Plaintiff in this Cause for John H. Devereux, a Citizen of Ohio, residing in the City of Cleveland, in that State, now Deceased), as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; and William A. Adams, a Citizen of the Kingdom of Great Britain. } No. 25.

Filed June 26, 1886.

H. D. GAMBLE, *Clk.*

R. B. MURRAY,
Solicitor for Respondent.

235 In the Circuit Court of the United States for the Western District of Pennsylvania, Sitting in Equity. May Term, 1884.

JOHN M. SHEDD
vs.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 257

To the honorable the judges of said court:

The Mahoning National Bank of Youngstown, Ohio, a banking corporation, duly organized under the laws of the United States, regulating the formation of associations for carrying on the business of banking, and doing business at Youngstown, in the State of Ohio, to whom your honorable court granted leave to intervene *pro interesse suo* in the above-entitled cause, in answer to the cross-bill of Henry Rawle, trustee, filed in this cause, asking and praying your honorable court to authorize him, as such trustee, to take possession of all the property, real, personal, and mixed, of the said defendant company, and to manage, operate, and control the same, and to order and decree that all the bonds and interest thereon set forth in his bill are due and unpaid, and to authorize him to sell the said
236 property free and discharged from all liens and encumbrances of all persons whatsoever, humbly unto this court showeth as follows:

First. The respondent admits the facts set forth in the first section of said cross-bill of Henry Rawle, trustee.

Second. The respondent admits the facts stated in the second section of said cross-bill, with this qualification, that the real estate owned by said company is situated in Butler as well as in Mercer county, said State; that under its original charter the Shenango & Allegheny Railroad Company had no authority to extend its western terminus beyond the junction of its railroad with the Erie & Pittsburgh railroad at the point now called Shenango, and had no authority to construct branches.

That the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 14th day of April, A. D. 1870, P. L. 1871, page 1546; that the authority under which it constructed its several branches was conferred upon it by virtue of an act of Assembly of the Commonwealth *of the Commonwealth* of Pennsylvania, approved the 7th day of March, A. D. 1872, P. L. 1873, page 1012, and all branches and extensions of said railroad mentioned in section second of said cross-bill were constructed under and [by] virtue of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of assembly.

237 *Third.* This respondent admits the facts set forth in the third section of said cross-bill, except that, for want of knowledge, it denies that an exact copy of said mortgage is annexed to said cross-bill.

Fourth. The respondent denies the facts alleged in the fourth and fifth sections of said cross-bill as therein stated and set forth, and

alleges that the said defendant company never authorized the execution and delivery to said Henry Rawle, trustee, of any mortgage which would cover, nor does the same purport to cover, any of the extensions of the main line of its railroad beyond the point contemplated, mentioned, and described in its original charter; and said company never authorized the execution of a mortgage to said Henry Rawle, trustee, to cover the several branches of the railroad afterwards constructed by it; and the said company never authorized the execution and delivery to said Henry Rawle, trustee, by the terms of which there should be conveyed to him, as trustee, any after-acquired property of said railroad company; that the said defendant company never authorized the execution of a mortgage to said Henry Rawle, trustee, which would convey to him all the railway, rights of way, depot grounds, and other land owned or held by said company; that the resolution of the defendant company, under and by virtue of which the mortgage mentioned in said cross-bill was executed, so far as the same relates to said mortgage, was in the following words, to wit: * * * "All of which said bonds shall be secured by a deed of trust or mortgage, to be
238 executed and delivered to Henry Rawle, of the city of Erie, as trustee in trust, and which deed of trust or mortgage shall convey the main line of the Shenango & Allegheny railroad, now partly constructed and to be hereafter constructed between the western terminus thereof, in the county of Mercer, at its junction with the Erie & Pittsburgh railroad and at a point in Butler county on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, rolling-stock, and things belonging to the company."

Fifth. That so far as the said mortgage purports to cover more of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited the same was executed without authority, was never authorized by the said defendant company, and is void; that the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized by law and its charter to construct a railroad; that the main line of said defendant company's railroad, as extended since the execution of the said mortgage to said Henry Rawle, trustee, under and by virtue of the acts of assembly hereinbefore mentioned, extends from Greenville, in said Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said main line on the northwest are extensions of said original main
239 line, constructed under and by virtue of the authority conferred upon said company by the aforesaid acts of assembly; that the branches and sidings described in Schedule B, attached to plaintiff's amended bill, to which respondent asks leave to refer, were constructed by virtue of power given by the aforesaid acts of assembly amending the original act incorporating said defendant, and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

This respondent says that so far, if at all, as the officers of said railroad undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was without authority, of which want of authority said trustee and each and every of the holders of said bonds had notice, the same appearing on the face of said bonds and of said mortgage.

Sixth. The respondent denies, as set forth in section five, that said mortgage is "a valid first lien prior to all other liens or incumbrances upon all and singular the railroad from Greenville to Hilliard's and the property, real, personal, and mixed, of the said railroad company" to any greater extent than hereinbefore set forth, or to secure the payment of said bonds, aggregating one million dollars; but it says that said bonds aggregate a much less sum. It denies that it is said in said mortgage or that it is provided that the trustee should sell the whole of said property, but only so much of
240 that mortgaged as should be necessary to pay the interest overdue and unpaid, and says that, by the terms of said mortgage, said trustee was to enforce the rights of the bondholders only on the request in writing of the holders and owners of three hundred thousand dollars in amount thereof, and upon proper indemnification by the persons making the same to the trustee against cost and expenses to be by them incurred by entry sale or legal proceedings; and, for want of knowledge, it denies that, according to the condition of said mortgage, default was made, as set forth in sections six and seven, or that request or indemnification has been made as therein set forth. Further, this respondent, for want of knowledge, denies the facts set forth in the eighth section of said cross-bill, and, on the contrary, alleges that it is informed and believes, and expects to be able to prove, that many of the alleged owners and holders of said bonds, who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage, are not the *bona fide* holders for value of the bonds held by them, and that many of said alleged bonds are paid.

Seventh. The respondent is informed, and believes, and expects to be able to prove, and therefore alleges, that there are not outstanding and unpaid bonds aggregating one million dollars in the hands of *bona fide* holders; that many of the said bonds were sold by the officers and directors of the defendant company to themselves at a very large discount, being at less than their real value, and
241 on more favorable terms than were given to the general public; that on part of the bonds so sold to themselves they allowed themselves a discount of forty per cent; that on the balance so sold they allowed themselves a discount of twenty per cent., and, in addition, gave themselves Mercer Mining & Manufacturing Company stock to the amount of forty per cent. of the bonds so sold to themselves.

That on or about September, 1872, the said officers sold said Mercer Mining & Manufacturing Company stock for par, so that their bonds would cost them but forty per cent.

Since that time they have received seven (7) per cent. interest on the par value of said bonds, which would make the interest they have received for twelve (12) years 1¾ per cent. per annum.

The respondent is unable to give the exact amounts and numbers of said bonds so acquired and held, or the names of all the parties holding the same; but, when aided by the process of this court upon the trial of this cause, expects to be able to prove the exact amounts, number, and names of the holders of said bonds so obtained, which, respondent is advised and expects to be able to prove, aggregate more than six hundred thousand dollars thereof, which have not passed into the hands of *bona fide* holders for value; that the bonds so held have justly and equitably been paid, and about three hundred dollars more on each thousand dollars; and respondent is advised that, in law and equity, the holders thereof are entitled to receive nothing more thereon.

242 Eighth. The respondent is advised by counsel and believes that the mortgage mentioned in said cross-bill, and known and hereafter designated as the first mortgage, is not a lien on the extensions and branches and other property described in schedule attached to plaintiff's bill, but is a lien upon only forty miles of the main line of said railroad; that the first mortgage, so far as it purports to convey or cover more than the forty miles of the main line therein described, and its appurtenances, equipments, rolling-stock and things belonging to said company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches and after-acquired property of said defendant company by the said first mortgage.

Ninth. The respondent adopts, as though made a part thereof, the allegations of the plaintiff in his amended bill, filed in this case May, 1886, in regard to the terms, conditions, execution, and delivery of the mortgage dated July 1st, 1877, and asks leave to refer thereto as to the terms thereof; that, of the bonds so secured by said mortgage, this respondent is the owner and holder, as hereinafter stated, of sixteen bonds, each for the sum of one thousand dollars, duly executed and delivered by said railroad company, to wit, which bonds are dated July 1st, 1877, payable thirty years thereafter, with interest at seven (7) per cent., payable semi-annually; to each

243 and every of said bonds is attached coupons or interest warrants, covering each and every installment of interest to become due thereon. Said bonds are numbered successively from thirteen hundred and forty-three to thirteen hundred and fifty-four, inclusive, and successively thirteen hundred and sixty-five to thirteen hundred and sixty-eight, inclusive.

The following coupons are overdue on said bonds and in default for want of payment, to wit, those due January 1st, 1878, and those due each six months thereafter until the present time.

That respondent holds said bonds to secure the payment of two certain promissory notes of the Shenango & Allegheny Railroad Company hereinafter fully set forth; that the Shenango & Alle-

gheny Railroad Company made and delivered to this respondent its two promissory notes, both payable to and endorsed by the Mercer Mining & Manufacturing Company, one for five thousand dollars, dated Feb'y 2d, 1884, payable sixty days after date, and one for five thousand dollars, dated March 7th, 1884, and payable sixty days after date.

That there is due to said respondent from the Shenango & Allegheny Railroad Company upon said two notes the sum of ten thousand dollars, with interest from maturity, and that respondent is entitled to receive from the proceeds of this road the interest and principal of said bonds ratably and in proportion with all the other holders thereof until its said debt is entirely paid.

244 Tenth. Your respondent is advised by counsel and believes that owing to the disputes existing as to the amount of the first-mortgage bonds outstanding and the extent of the lien thereof, and the dispute as to the extent of the lien of the second-mortgage bonds, and as disputes have arisen as to the amount and validity of the receiver's certificates, *that* it is necessary in order to protect its rights as a lien creditor to have a court of competent jurisdiction determine the amount of said bonds outstanding and the amount due thereon and the extent of the lien thereof, as well as the amount and the extent of the lien of said second-mortgage bonds, as well as the amount and validity of the said certificates before a sale of the said properties.

And the respondent respectfully represents that if the property of the defendant company is sold before the validity and extent of said liens are judicially determined, bidding will be determined on account of the risk and uncertainty, and the properties will be in great danger of being sacrificed at said sale.

Wherefore your respondent prays that an accounting may be had and taken in premises that the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined; that the extent of the lien of each may be judicially determined, and upon the final determination of these matters, and not before, that an order of sale may be issued to sell the mortgaged premises,

245 and for such other and further relief as may be just and equitable in the premises and to your honors shall seem meet.

And your respondent, as in duty bound, will ever pray.

R. B. MURRAY,
JOHN DALZELL,
Solicitors for Respondent.

THE STATE OF OHIO, }
Mahoning County, } ss:

Before me, the undersigned authority, personally appeared J. F. McEwen, who, being duly sworn according to law, deposes and says that he is the ass't cashier of the Mahoning National Bank of Youngstown, Ohio, the respondent within named, and that the facts set forth in the foregoing answer, so far as the same are stated

of this deponent's knowledge, are true, and so far as the same are stated on information and belief are believed by him to be true.

J. F. McEWEN.

Sworn to and subscribed before me, a notary public in and for said county, this 26th day of June, 1886.

E. M. WILSON,
Notary Public.

246 *Answer of Mahoning National Bank of Youngstown, Ohio, to Cross-Bill of Henry Rawle, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN M. SHEDD, Plaintiff by substitution in place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased (who was substituted as Plaintiff in this Cause for John H. Devereux, a Citizen of Ohio, residing in the City of Cleveland, in that State, now Deceased), as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain. } No. 25.

Filed June 29, 1886.

H. D. GAMBLE, *Clk.*

R. R. MURRAY,
Solicitor for Respondent.

247 In the Circuit Court of the United States for the Western District of Pennsylvania, Sitting in Equity. May Term, 1884.

JOHN M. SHEDD, Trustee,
versus
THE SHENANGO & ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* } No. 25.

To the honorable the judges of said court:

Thomas H. Wells, a citizen of the State of Ohio and residing in the city of Youngstown, said State, to whom your honorable court granted leave to intervene *pro interesse suo* in the above-entitled cause, in answer to the cross-bill of Henry Rawle, trustee, filed in this cause, asking and praying your honorable court to authorize

him, as such trustee, to take possession of all the property—real, personal, and mixed—of the said defendant company, and to manage, operate, and control the same, and to order and decree that all the bonds and interest thereon set forth in his bill are due and unpaid, and to authorize him to sell the said property free and discharged from all liens and encumbrances of all persons whatsoever, humbly unto this court showeth as follows:

248 First. The respondent admits the facts set forth in the first section of said cross-bill of Henry Rawle, trustee.

Second. The respondent admits the facts stated in the second section of said cross-bill, with this qualification, that the real estate owned by said company is situated in Butler as well as in Mercer county, said State; that under its original charter the Shenango & Allegheny Railroad Company had no authority to extend its western terminus beyond the junction of its railroad with the Erie & Pittsburgh railroad, at the point now called Shenango, and had no authority to construct branches; that the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 14th day of April, A. D. 1870, P. L., 1871, page 1516; that the authority under which it constructed its several branches was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 7th day of March, A. D. 1872, P. L., 1873, page 1012, and all branches and extensions of said railroad mentioned in section second of said cross-bill were constructed under and by virtue of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of Assembly.

249 Third. This respondent admits the facts set forth in the third section of said cross-bill, except that for want of knowledge it denies that an exact copy of said mortgage is annexed to said cross-bill.

Fourth. The respondent denies the facts alleged in the fourth and fifth sections of said cross-bill as therein stated and set forth, and alleges that the said defendant company never authorized the execution and delivery to said Henry Rawle, trustee, of any mortgage which would cover, nor does the same purport to cover, any of the extensions of the main line of its railroad beyond the point contemplated, mentioned, and described in its original charter; and said company never authorized the execution of a mortgage to said Henry Rawle, trustee, to cover the several branches of the railroad afterwards constructed by it; and the said company never authorized the execution and delivery to said Henry Rawle, trustee, by the terms of which there should be conveyed to him as such trustee any after-acquired property of said railroad company; that the said defendant company never authorized the execution of a mortgage to said Henry Rawle, trustee, which would convey to him all the railway, rights of way, depot grounds, and other land owned or held by said company; that the resolution of the defendant company under and by virtue of which the mortgage mentioned in said cross-bill was executed, so far as the same relates to said mortgage,

was in the following words: * * * "All of which said bonds
250 shall be secured by a deed of trust or mortgage, to be executed and delivered to Henry Rawle, of the city of Erie, as trustee, in trust, and which deed of trust or mortgage shall convey the main line of the Shenango & Allegheny railroad now partly constructed and to be hereafter constructed between the western terminus thereof, in the county of Mercer, at its junction with the Erie & Pittsburgh railroad, and at a point in Butler county on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, rolling-stock, and things belonging to said company."

Fifth. That so far as the said mortgage purports to cover more of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited, the same was executed without authority, was never authorized by the said defendant company, and is void; that the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized by law and its charter to construct a railroad; that the main line of said defendant company's railroad, as extended since the execution of the said mortgage to said Henry Rawle, trustee, under and by virtue of the acts of Assembly hereinbefore mentioned, extends from Greenville, in said Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said main line on the northwest are extensions of said original main
251 line, constructed under and by virtue of the authority conferred upon said company by the aforesaid acts of Assembly; that the branches and sidings described in Schedule B attached to plaintiff's amended bill, to which respondent asks leave to refer, were constructed by virtue of power given by the aforesaid acts of Assembly amending the original act incorporating said defendant, and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

This respondent says that so far, if at all, as the officers of said railroad undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was without authority, of which want of authority said trustee and each and every of the holders of said bonds had notice, the same appearing on the face of said bonds and of said mortgage.

Sixth. The respondent denies, as set forth in section five, that said mortgage is "a valid first lien, prior to all other liens or encumbrances upon all and singular the railroad from Greenville to Hillard's, and the property, real, personal, and mixed, of the said railroad company" to any greater extent than hereinbefore set forth, or to secure the payment of said bonds, aggregating one million dollars, but it says that said bonds aggregate a much less sum. It denies that it is said in said mortgage or that it is provided that the trustee should sell the whole of said property, but only so much of
252 that mortgaged as should be necessary to pay the interest

overdue and unpaid, and says that, by the terms of said mortgage, said trustee was to enforce the rights of the bondholders only on request in writing of the holders and owners of three hundred thousand dollars in amount thereof and upon proper indemnification by the persons making the same to the trustee against cost or expenses to be by them incurred by entry sale or legal proceedings; and, for want of knowledge, it denies that, according to the condition of said mortgage, default was made, as set forth in sections six and seven, or that request or indemnification has been made, as therein set forth.

Seventh. The respondent is advised by counsel and believes that the mortgage mentioned in said cross-bill and known and hereafter designated as the first mortgage is not a lien on the extensions and branches and other property described in schedule attached to plaintiff's bill, but is a lien upon only forty miles of the main line of said railroad; that the first mortgage, so far as it purports to convey or cover more than the forty miles of the main line therein described, and its appurtenances, equipments, rolling-stock, and things belonging to the company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches
253 and after-acquired property of said defendant company by the said first mortgage.

Eighth. The respondent adopts, as though made a part thereof, the allegations of the plaintiff in his amended bill filed in this case, May, 1886, in regard to the terms, conditions, execution, and delivery of the mortgage dated July 1st, 1877, and asks leave to refer thereto as to the terms thereof; that of the bonds so secured by said mortgage this respondent is the owner and holder, as hereinafter stated, of eighteen bonds, six for the sum of one thousand dollars each, two for the sum of five hundred dollars each, and ten for the sum of one hundred dollars each, duly executed and delivered by said railroad company, to wit, which bonds are dated July 1st, 1877, payable thirty years thereafter, with interest at seven (7) per cent., payable semi-annually. To each and every of said bonds is attached coupons or interest warrants covering each and every instalment of interest to become due thereon. Said bonds are numbered successively twenty-three hundred and thirty one to twenty-three hundred and forty, inclusive, eighteen hundred and sixty-five to eighteen hundred and seventy, inclusive, thirteen hundred and sixty-nine to thirteen hundred and seventy-two, inclusive, thirteen hundred and four, and fourteen hundred and fifty five.

The following coupons are overdue on said bonds and in default for want of payment, to wit, those of Jan'y 1st, 1878, and those each six months thereafter until the present time.

254 That respondent holds said bonds to secure the payment of one promissory note of the Shenango & Allegheny Railroad Company, hereinafter fully set forth; that the Shenango & Allegheny Railroad Company made and delivered to this respondent its promissory note, payable to and endorsed by the Mercer Mining & Manu-

facturing Company, for five thousand dollars, dated Feb'y 23d, 1884, payable twenty days after date.

That there is due to said respondent from the Shenango & Allegheny Railroad Company upon said note the sum of five thousand dollars, with interest from the 19th day of March, 1884, and that respondent is entitled to receive from the proceeds of this road the interest and principal of said bonds, ratably and in proportion with all the other holders thereof, until the said debt is entirely paid.

Ninth. Your respondent is advised by counsel and believes that, owing to the disputes existing as to the amount of the first-mortgage bonds outstanding and the extent of the lien of the second-mortgage bonds, and as disputes have arisen as to the amount and validity of the receivers' certificates, *that* it is necessary, in order to protect its rights as a lien creditor, to have a court of competent jurisdiction determine the amount of said bonds outstanding, and the amount due thereon, and the extent of the lien thereof, as well as the amount and extent of the lien of said second-mortgage bonds, as well as the amount and validity of the said receiver's certificates,
255 before a sale of the said properties.

And the respondent respectfully represents that if the property of the defendant company is sold before the validity and extent of said liens are judicially determined, bidding will be deterred on account of the risk and uncertainty and the properties will be in great danger of being sacrificed at said sale.

Wherefore your respondent prays that an accounting may be had and taken in the premises; that the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined; that the extent of the lien of each may be judicially determined, and upon the final determination of these matters, and not before, that an order of sale may be issued to sell the mortgaged premises, and for such other and further relief as may be just and equitable in the premises and to your honors may seem meet.

And your respondent, as in duty bound, will ever pray.

THOMAS H. WELLS,
By R. B. MURRAY AND
JOHN DALZELL.

256 THE STATE OF OHIO, } ss:
Mahoning County, }

Before me, the undersigned authority, personally appeared Thomas H. Wells, who, being duly sworn according to law, deposes and says that he is the respondent within named, and that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and so far as the same are stated on information and belief are believed by him to be true.

THOMAS H. WELLS.

Sworn to and subscribed before me, a notary public in and for said county, this 28th day of June, 1886.

J. E. McVEY,
Notary Public.

257 *Answer of T. H. Wells to Cross-Bill of Henry Rawle, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN M. SHEDD, Plaintiff by substitution in place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased (who was substituted as Plaintiff in this Cause for John H. Devereux, a Citizen of Ohio, residing in the city of Cleveland, in that State, now Deceased), as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain. No. 25.

Filed June 26, 1889.

H. D. GAMBLE, *Clk.*

R. B. MURRAY,
Solicitor for Resp'nd't.

258 In the Circuit Court of the United States for the Western District of Pennsylvania. Sitting in Equity. May Term, 1884.

JOHN M. SHEDD, Trustee,
versus
THE SHENANGO & ALLEGHENY RAILROAD COMPANY, HENRY RAWLE, Trustee, *et al.* No. 25.

To the honorable the judges of said court:

Wick Bros. & Co., of Youngstown, Ohio, an association of persons not incorporated, but doing a general banking business at Youngstown, Ohio, as a copartnership under the style and firm name of Wick Bros. & Co.; composed of the following persons: Paul Wick, Henry Wick, John C. Wick, Lucretia Bonnell, and Emily Bonnell, to whom your honorable court granted leave to intervene *pro interesse suo* in the above-entitled cause, in answer to the cross-bill of Henry Rawle, trustee, filed in this cause, asking and praying your honorable court to authorize him as such trustee to take possession of all the property, real, personal, and mixed, of the said defendant company, and to manage, operate, and control the same, and to order and decree that all the bonds and interest thereon set
259 forth in his bill are due and unpaid, and to authorize him to sell the said property free and discharged from all liens and

encumbrances of all persons whatsoever, humbly unto this court showeth as follows:

First. The respondent admits the facts set forth in the first section of said cross-bill of Henry Rawle, trustee.

Second. The respondent admits the facts stated in the second section of said cross-bill with this qualification, that the real estate owned by said company is situated in Butler as well as in Mercer county, said State; that under its original charter the Shenango & Allegheny Railroad Company had no authority to extend its western terminus beyond the junction of its railroad with the Erie & Pittsburgh railroad at the point now called Shenango, and had no authority to construct branches; that the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 14th day of April, A. D. 1870, P. L., 1871, page 1516; that the authority under which it constructed its several branches was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 7th day of March, A. D. 1872, P. L., 1873, page 1012, and all branches and extensions of said railroad mentioned in section second of said cross-bill were constructed under and by virtue of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of Assembly.

260 Three. This respondent admits the facts set forth in the third section of said cross-bill, except that, for want of knowledge, it denies that an exact copy of said mortgage is annexed to said cross-bill.

Fourth. The respondent denies the facts alleged in the fourth and fifth sections of said cross bill as therein stated and set forth, and alleges that the said defendant company never authorized the execution and delivery to said Henry Rawle, trustee, of any mortgage which would cover, nor does the same purport to cover, any of the extensions of the main line of its railroad beyond the point contemplated, mentioned, and described in its original charter; and said company never authorized the execution of a mortgage to said Henry Rawle, trustee, to cover the several branches of the railroad afterwards constructed by it; and the said company never authorized the execution and delivery to said Henry Rawle, trustee, by the terms of which there should be conveyed to him as trustee any after-acquired property of said railroad company; that the said defendant company never authorized the execution of a mortgage to said Henry Rawle, trustee, which would convey to him all the railway, rights of way, depot grounds, and other lands owned or held by said company; that the resolution of the defendant company, under and by virtue of which the mortgage mentioned in said cross-bill was executed, so far as the same relates to said mortgage, was in the following words, to wit: * * * "All of

which said bonds shall be secured by a deed of trust or
261 mortgage to be executed and delivered to Henry Rawle, of the city of Erie, as trustee in trust, and which deed of trust or mortgage shall convey the main line of the Shenango & Allegheny railroad, now partly constructed and to be hereafter constructed between the western terminus thereof, in the county of Mercer, at its junction with the Erie & Pittsburgh railroad, and at a point in Butler county, on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, rolling-stock and things belonging to the company."

Fifth. That so far as the said mortgage purports to cover more of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited, the same was executed without authority, was never authorized by the said defendant company, and is void; that the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized by law and its charter to construct a railroad; that the main line of said defendant company's railroad, as extended since the execution of the said mortgage to said Henry Rawle, trustee, under and by virtue of the acts of Assembly hereinbefore mentioned, extends from Greenville, in said Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which main line on the southeast and two miles of said main
262 line on the northwest are extensions of said original main line, constructed under and by virtue of the authority conferred upon said company by the aforesaid acts of Assembly; that the branches and sidings described in Schedule B, attached to plaintiff's amended bill, to which respondent asks leave to refer, were constructed by virtue of power given by the aforesaid acts of Assembly amending the original act incorporating said defendant, and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

This respondent says that so far, if at all, as the officers of said railroad undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was without authority, of which want of authority said trustee and each and every of the holders of the said bonds had notice, the same appearing on the face of said bonds and of said mortgage.

Sixth. The respondent denies, as set forth in section five that said mortgage is "a valid first lien, prior to all other liens or encumbrances upon all and singular the railroad from Greenville to Hillard's, and the property, real, personal, and mixed, of the said railroad company," to any greater extent than hereinbefore set forth, or to secure the payment of said bonds, aggregating one million dollars, but it says that said bonds aggregate a much less sum. It denies that it is said in said mortgage or that it is provided that the

trustee should sell the whole of said property, but only so much of that mortgaged as should be necessary to pay the interest
263 overdue and unpaid, and says that, by the terms of said mortgage said trustee was to enforce the rights of the bondholders only on the request in writing of the holders and owners of three hundred thousand dollars in amount thereof and upon proper indemnification by the persons making the same to the trustee against cost and expenses to be by them incurred by entry, sale, or legal proceedings; and, for want of knowledge, it denies that according to the condition of said mortgage default was made as set forth in sections six and seven, or that request for indemnification has been made, as therein set forth. Further, this respondent, for want of knowledge, denies the facts set forth in the eighth section of said cross-bill, and, on the contrary, alleges that it is informed and believes, and expects to be able to prove, that many of the alleged owners and holders of said bonds who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage are not the *bona fide* holders for value of the bonds held by them, and that many of said alleged bonds are paid.

Seventh. The respondent is informed and believes, and expects to be able to prove, and therefore alleges, that there are not outstanding and unpaid bonds aggregating one million dollars in the hands of *bona fide* holders; that many of the said bonds were sold by the officers and directors of the defendant company to themselves at a very large discount, being at less than their real value, and
264 on more favorable terms than were given to the general public; that on part of the bonds so sold to themselves they allowed themselves a discount of forty per cent.; that on the balance so sold they allowed themselves a discount of twenty per cent., and, in addition, gave themselves Mercer Mining and Manufacturing Company stock to the amount of forty per cent. of the bonds so sold to themselves; that on or about September, 1872, the said officers sold said Mercer Mining & Manufacturing Company stock for par, so that their bonds would cost them but forty per cent.

Since that time they have received seven (7) per cent. interest on the par value of said bonds, which would make the interest they have received for twelve years 17½ per cent. per annum.

The respondent is unable to give the exact amounts and numbers of said bonds so acquired and held or the names of all the parties holding the same; but, when aided by the process of this court upon the trial of this cause, expects to be able to prove the exact amounts, number, and names of the holders of said bonds so obtained, which respondent is advised, and expects to be able to prove, aggregate more than six hundred thousand thousand dollars thereof, which have not passed into the hands of *bona fide* holders for value; that the bonds so held have justly and equitably been paid, and about three hundred dollars more on each thousand dollars; and respondent is advised that in law and equity the holders thereof are
265 entitled to receive nothing more thereon.

Eighth. The respondent is advised by counsel, and believes, that the mortgage mentioned in said cross-bill and known and hereafter designated as the first mortgage is not a lien on the extensions and branches and other property described in schedule attached to plaintiff's bill, but is a lien upon only forty miles of the main line of said railroad.

That the first mortgage, so far as it purports to convey or cover more than the forty miles of the main line therein described and its appurtenances, equipments, rolling-stock, and things belonging to said company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches and after-acquired property of said defendant company by the said first mortgage.

Ninth. The respondent adopts, as though made a part thereof, the allegations of the plaintiff in his amended bill filed in this case May, 1886, in regard to the terms, conditions, execution, and delivery of the mortgage dated July 1st, 1877, and asks leave to refer thereto as to the terms thereof; that of the bonds so secured by said mortgage this respondent is the owner and holder, as hereinafter stated, of five bonds, each for the sum of one thousand dollars, duly executed and delivered by said railroad company, to wit, which bonds are dated July 1st, 1877, payable thirty years there-
266 after, with interest at seven (7) per cent., payable semi-annually; to each and every of said bonds is attached coupons or interest warrants covering each and every instalment of interest to become due thereon; said bonds are numbered successively thirteen hundred and fifty-five to thirteen hundred and fifty-eight, inclusive, and thirteen hundred and ninety-five.

The following coupons are overdue on said bonds and in default for want of payment, to wit, those of Jan'y 1st, 1878, and those each six months thereafter until the present time.

That respondent holds said bonds to secure the payment of one promissory note of the Shenango & Allegheny Railroad Company hereinafter fully set forth; that the Shenango & Allegheny Railroad Company made and delivered to this respondent its promissory note, payable to and endorsed by the Mercer Mining & Manufacturing Company, for twenty-five hundred dollars, dated Feb'y 12, 1884, payable sixty days after date.

That there is due to said respondent from the Shenango & Allegheny Railroad Company upon said note the sum of twenty-five hundred dollars, with interest from the 16th day of April, 1884, and that respondent is entitled to receive from the proceeds of this road the interest and principal of said bonds, ratably and in proportion with all the other holders thereof, until its said debt is entirely paid.

Tenth. Your respondent is advised by counsel and believes that, owing to disputes existing as to the amount of the first-mort-

267 gage bonds outstanding and the extent of the lien thereof, and the dispute as to the extent of the lien of the second-mortgage bonds, and as disputes have arisen as to the amount and validity of the receivers' certificates, *that* it is necessary, in order to protect its rights as a lien creditor, to have a court of competent jurisdiction determine the amount of said bonds outstanding and the amount due thereon, and the extent of the lien thereof, as well as the amount and extent of the lien of said second-mortgage bonds, as well as the amount and validity of the said certificates, before a sale of the said properties.

And the respondent respectfully represents that if the property of the defendant company is sold before the validity and extent of said liens are judicially determined bidding will be deterred on account of the risk and uncertainty, and the properties will be in great danger of being sacrificed at said sale.

Wherefore your respondent prays that an accounting may be had and taken in the premises; that the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined, and upon the final determination of these matters, and not before, that an order of sale may be issued to sell the mortgaged premises, and for such other and further relief as may be just and equitable in the premises and to your honors may seem meet.

And your respondents, as in duty bound, will ever pray.

R. B. MURRAY AND
JOHN DALZELL,
Solicitors for Respondent.

268 THE STATE OF OHIO, }
Mahoning County, } *ss:*

Before me, the undersigned authority, personally appeared Paul Wick, who, being sworn according to law, deposes and says that he is one of the firm of Wick Bros. & Co., of Youngstown, Ohio, the respondent within named, and that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and, so far as the same are stated on information and belief, are believed by him to be true.

PAUL WICK.

Sworn to and subscribed before me, a notary public in and for said county, this 26th day of June, 1886.

[SEAL.] E. M. WILSON,
Notary Public.

269 *Answer of Wick Bros. & Co. to Cross-Bill of Henry Rawle, Trustee.*

Circuit Court of the United States, Western District of Pennsylvania.
May Term, 1884.

JOHN M. SHEDD, Plaintiff by substitution in place of John H. Devereux, Trustee, a Citizen of Ohio, Deceased (who was substituted as Plaintiff in this Cause for John H. Devereux, a Citizen of Ohio, residing in the City of Cleveland, in that State, now Deceased), as Trustee,

vs.

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation, Citizen of Pennsylvania; Henry Rawle, Trustee, a Citizen of the State of Pennsylvania; Thomas P. Fowler, Receiver of the said The Shenango and Allegheny Railroad Company, a Citizen of the State of New York; The Bristol and South Wales Railway Wagon Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain; The Union Rolling Stock Company, Limited, a Corporation and Citizen of the Kingdom of Great Britain, and William A. Adams, a Citizen of the Kingdom of Great Britain. } No. 25.

Filed June 30, 1886.

H. D. GAMBLE, *Clk.*

R. B. MURRAY,
Solicitor for Respondent.

270 May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee, &c.,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, *et al.* } No. 25.

Surmotions of plaintiff and Henry Rawle, trustee, for decrees authorizing sale of railroad, etc.

ACHESON, *J.*:

When this case was formerly before us, upon the petition of Henry Rawle, trustee, for leave to sell the Shenango and Allegheny railroad under the power of sale in the mortgage to him, we expressed the opinion that an early sale of the railroad as an entirety would undoubtedly conduce to the benefit of all its creditors. This opinion is greatly strengthened by what has since transpired. Under the operation of the receivership the financial condition of the company is constantly growing worse, and it is not entirely clear that the best interests of all parties concerned will be promoted by a speedy sale. In this view the creditors generally concur. The controlling objection to the sale as formerly proposed has been removed by the joint application of the trustees under the two mortgages to sell by virtue of the powers of sale conferred upon them respectively,
271 they agreeing to unite in the sale so as to assure to the purchaser an undoubted title to the whole property, and to so conduct the sale as to secure the highest price attainable.

We have no hesitation in finding in the case of the Devereux-Shedd mortgage that there has been a default in the payment of interest coupons for more than eighteen months, and that by the election of one-tenth in amount of the bondholders the principal of the bonded indebtedness has become due and payable, and that by reason thereof the trustee is entitled to foreclose the mortgage or exercise his power of sale.

The sale by the trustee will be under the control and subject to the approval of the court, and we can see to it that no unfair advantage is taken of the minority of the bondholders by reason of any improper combination among the majority or otherwise.

The court having reached the conclusion that the mortgage trustees should be permitted to exercise their powers of sale under the direction of the court, it is to be hoped that the parties can speedily agree as to the manner in which the property shall be offered to sale, but if they do not agree we will hear them further upon that point before a decree is framed.

It is proper for me to add that the conclusions above expressed have been reached after consultation with Judge McKennan, and have his approval.

272 *Opinion of the Court.*

May Term, 1884.

JOHN M. SHEDD, Trustee, &c., *v.* THE SHENANGO AND ALLEGHENY RAILROAD CO. *et al.* } No. 25.

Surmotions of the plaintiff and Henry Rawle, trustee, for decree, etc.

Filed July 13, 1886. H. D. GAMBLE, *Clk.*

273 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee, Plaintiff, *vs.* THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.*, Defendants. } No. 25.

And now, October 14th, 1886, the death of John H. Devereux having been suggested, and John M. Shedd having been duly and legally substituted in his place, this cause came on to be heard on the 30th day of June, A. D. 1886, upon a motion by and on behalf of the said John M. Shedd, trustee, and also by and on behalf of the said Henry Rawle, trustee, that the court shall order and decree a sale of all and singular the property, real, personal, and mixed, of the Shenango and Allegheny Railroad Company freed and discharged from all liens and incumbrances whatsoever; and also upon a motion made by and on behalf the said John M. Shedd, trustee; and also by and on behalf of the said Henry Rawle, trustee, to the effect that each trustee shall be authorized and empowered under and in accordance with the terms of his mortgage to proceed and

sell all and singular the property, real, personal, and mixed, covered by or included within his said recited mortgage, and upon a motion by and on behalf of both trustees for a sale of the entire property of the defendant company as incumbered and unable to pay the
274 liens upon it, and so that the proceeds thereof may be distributed among the creditors entitled thereto. Due notice having been given to all parties in interest of these motions, and that the same would be heard, and the same having been already heard, all the parties in interest appearing by counsel and taking part in the argument, and the various papers and proceedings and record in the case of Young *et al. vs.* The Shenango and Allegheny Railroad Company, now pending at No. 17, May term, 1884, of this court, as well as also all papers, affidavits, and other proceedings in this case and other documents, were produced, heard, and considered by the court in support of the said motions, and the court, after consideration, being of the opinion that it was to the best interest of all parties concerned that the said railroad and all the property of the Shenango and Allegheny Railroad Company should be sold as speedily as possible; and having filed an opinion to that effect, and the parties in interest being unable to agree upon the form of a decree directing said sale, and the court having fixed the 30th day of September, A. D. 1886, for settling the form of a decree, and counsel for all the respective parties having appeared and having been duly heard, and the court having considered the premises, do now order, adjudge, and decree as follows:

(1st.) That the Shenango and Allegheny Railroad Company is, and since 1865 has been, a corporation duly created and existing under the laws of the State of Pennsylvania, and especially
275 under an act of the General Assembly of said State entitled "An act to incorporate the Bear Creek Railroad Company," approved 20th March, 1865, and the various supplements and amendments thereto; that the said company was originally incorporated under the name of the Bear Creek Railroad Company, but by authority of law its name was changed to that of the Shenango and Allegheny Railroad Company; and the said company, in pursuance of law, heretofore, to wit, on or about the 1st day of April, A. D. 1869, became the owner and possessor of and still is the owner and possessor of (subject to the liens hereinafter enumerated) a certain railroad, the main line of which extends from Greenville, in the county of Mercer, to Hilliard's, in the county of Butler, being a distance of about forty-seven (47) miles, seven miles of which was constructed after said date, with the various sidings, switches, and appurtenances therewith connected, and the said company is, and for many years has been, also the lawful owner of the following branch lines of railroads:

(1st.) A branch known as Reed branch, running eastwardly from Reed's station, in Pine township, Mercer county, on the main line of the road, a distance of one and one-half miles, to Filer, Sutliff & Co. and Fruit, Carnes & Co.'s mines; of this branch the company owns one thousand feet of the track nearest the main line of the railroad company and all the ties.

(2nd.) The Filer branch, extending from a point near Filer station, in Pine township, Mercer county, westerly about one and
276 one-half miles to the coal mines of Westerman, Filer & Co. and the Sharon Coal Company, in said Pine township; of this branch the defendant company owns one thousand feet of the ties and rails nearest to the main line of the defendant company's road.

(3rd.) Coaltown branch, running from Branchton, in Slippery Rock township, Butler county, on the main line in a southerly direction through Cherry township, Butler county, three and two-tenth miles to Coaltown, in said Cherry township. This branch was originally constructed by the Union Coal and Coke Company, Limited, and purchased from said company by the defendant company in 1883 for forty-eight thousand dollars ($48,000). Of this money the defendant company paid such sums that the entire balance unpaid, with interest, on March 1st, 1886, was twenty-three thousand and seven and fifty-three one-hundredths dollars ($23,007.53).

(4th.) The south branch extends from Branchton, in said Slippery Rock township, in a southerly direction to Gommersal, in said Cherry township, and, including its branches and sidings, is five and one-quarter miles long.

(5th.) The Bull Valley branch extends from a point on the main line in Marion township, Butler county, and one-half mile from Hilliard's station to Morristown, a distance of three and two-tenths miles.

(6th.) Beginning from a point on the Coaltown branch, about one mile southwardly from Branchton, there was constructed,
277 about the year 1883, a line of railroad, extending from said point down to Butler, a distance of about twenty-two miles. This road is called the West Penn and Shenango Connecting railroad. This railroad is operated by the Shenango and Allegheny Railroad Company under a joint contract between the Shenango and Allegheny Railroad Company, the Pennsylvania Railroad Company, and the West Penn and Shenango Connecting Railroad Company, which contract includes an option to the Shenango and Allegheny Railroad Company to lease the said road; the said West Penn and Shenango Connecting railroad connects the Shenango and Allegheny railroad at Butler with the West Pennsylvania railroad, and also with the Pittsburgh and Western railroad. Connected with the said main line and the different branches thereof are various switches, turn-outs, and sidings, owned by the said defendant company, amounting in the aggregate to about ten and seven-tenth miles.

The said railroad and the sidings and branches are constructed on a right of way sixty feet in width at grade.

And the said railroad company now is and for many years has been the lawful owner of and in possession of (subject to the liens and incumbrances hereinafter stated) the following-described real estate:

(1st.) A lot of land situate in the borough of Greenville, Mercer county, Pennsylvania, bounded and described as follows: Begin-

ning on the east line of Race street; thence by a street
278 lately laid out northerly sixty-one and three-quarter degrees east nine and one-tenth rods to the Erie canal; thence by the west side of the towing path of the Erie canal south twenty-eight and three-quarter degrees east twenty-four and three-tenths rods to a post on the line of land owned by M. Hammill; thence by the said land of M. Hammell south eighty-nine degrees west twelve and seven-tenth rods to the line of Race street; thence by Race street north twenty-one and one-half degrees west eighteen and seventy-five one-hundredth perches to the place of beginning, containing two hundred and twenty perches of land, more or less.

(2nd.) The following-described portions of the Erie canal lying in the Borough of Greenville and Hempfield township, Mercer county, Pennsylvania.

(*a.*) That portion of the Erie canal in the Borough of Greenville lying between the Little Shenango river and Cherry alley, being sixty feet wide on Cherry alley and ninety-two feet in width at the Little Shenango river and five hundred and twenty feet in length.

(*b.*) That portion lying between the south side of Clinton street in the said Borough and that portion of the canal owned by F. Cooper.

(*c.*) That portion of the said canal between the northerly side of the Little Shenango river and a point four feet south of the bulk-
head of Lock No. 24, with the canal beds, banks, towpaths,
279 and slopes; also the ponds, basins, and lands now or formerly covered by the waters of said canal, and all the appurtenances of the said canal between the above-described points. The lots described in paragraph two are held by *the* A. G. Egbert in trust for the defendant company.

3rd. (*a.*) A certain tract of land, situate in West Salem township, Mercer county, Pennsylvania, bounded on the north by the Shenango river, east by the New York, Pennsylvania and Ohio railroad, south by the lands of Eisenhart's heirs, and west by the Erie and Pittsburgh railroad, containing twenty acres of land, more or less, on a part of which is located offices, machine-shops, and the Shenango yards of said company.

(*b.*) A triangular tract of land in said West Salem township, bounded on the east by the track of the Shenango and Allegheny railroad, south by the Shenango river, and west by the right of way of the New York, Pennsylvania and Ohio Railroad Company, containing eight acres of land, more or less.

(*c.*) Also a certain tract of land laid out in town lots in the village of Shenango, in said West Salem township, bounded and described as follows: Beginning at the northwest corner at a large white oak, thence by the lands of Daniel Knappenberger, south eighty-nine degrees and twenty-six minutes east six hundred and eighty-one feet to a stone; thence south one degree and thirty minutes west two and five-tenths feet to a fence post; thence along the lands of
A. J. McDowell south eighty-five degrees and thirty four min-
280 utes east eighteen hundred and forty-nine and five-tenths feet to a point in the center of State street; thence along the

center of State street north fifteen degrees and fifteen minutes east two hundred and ninety-nine and five-tenths feet to a point in the center of said State street; thence south eighty-six degrees and ten minutes east two hundred and twenty-nine and two-tenths feet to the right of way of the Erie and Pittsburgh railroad; thence south fifteen degrees and eight minutes west fifteen hundred and ninety-seven and three-tenths feet along said right of way of the Erie and Pittsburgh railroad to a point on the line of the lands of Eisenhart's heirs; thence along the line of the lands of Eisenhart's heirs north seventy-nine degrees and seventeen minutes west two thousand four hundred and eighty-one and five-tenths feet to a peg on the line of lands of Reuben Christman; thence along the line of lands of Reuben Christman and Daniel Knappenberger north one degree and twenty-eight minutes east nine hundred and sixty-four feet to the place of beginning—excepting the following lots, which have been conveyed by the said company out of the foregoing-described premises, to wit: Lots numbered 69, 70, 71, and 72, conveyed to P. Jones; lots numbered 73, 74, 75, 76, 77, and 78, conveyed to J. H. DeGarmo; lots numbered 127, 128, 129, 130, and 131, conveyed to P. Jones; lots numbered 132 and 133, conveyed to C. J. Strachan; lots numbered 140 and 141, conveyed to Mrs. C. Arnold; lots numbered 151, 152, and 153, conveyed to Mrs. J. C. Hickey; lots numbered 144 and 145, conveyed to Mrs. Derr; lots numbered
281 155, 156, and 157, conveyed to James Bortz; lots numbered 158 and 159, conveyed to R. L. Lee; lots numbered 160 and 161, conveyed to J. Beal; lots numbered 172 and 173, conveyed to Taylor Bros.; lot 174, conveyed to Mr. Egan; lots numbered 178, 179, 180, and 181, conveyed to C. Arnold and wife; lot number 191 conveyed to J. L. Dunlap; lots numbered 194, 195, and 196, conveyed to J. J. DeGarmo; lot number 197, conveyed to E. Berry; lot number 208, conveyed to H. Koontz; lot number 209, conveyed to D. H. Bortz; lot number 211, conveyed to Mrs. Gray; lot number 210, conveyed to W. A. Kreps; lot number 213, conveyed to F. Mathey; lot number 217, conveyed to John McKinley; lot numbered 244 and 246, conveyed to Valentine Bearer; lot numbered 236, conveyed to J. M. Koontz; lot numbered 239, conveyed to the Evangelical Church.

The following lots in the said tract have been sold by article of agreement to the parties hereinafter named: Lot number 175, to John McAndrew; lot number 245, to P. Mathey; lot number 228, to Edward Fischer; lot number 232, to M. Beil—on all of which lots there are balances of unpaid purchase-money; lot number 198 has been leased to R. H. Libby with an option of purchase.

On lots number 176, 177 there is erected and belonging to the defendant company a one-and-a-half-story dwelling house sixteen by twenty-four feet, with an addition fourteen by fourteen feet, with out-buildings.

On lots 202 and 203 there are erected and belonging to the
282 defendant company a two-story dwelling house eighteen by twenty-eight feet, with an addition fourteen by sixteen feet, and out-buildings, including a stable twenty by thirty feet.

The tract of land described in section "C," paragraph three, is held by J. H. Devereux in trust for the said defendant company.

Said defendant company now is and for many years has been the lawful owner of and in possession of, and still is the owner of and in possession of, the following-described personal property: One depot at Greenville, one depot at Shenango, one depot at Hamburg; one depot at Fredonia, with grounds for loading stock, &c.; one depot at Mercer, with grounds for loading stock, &c.; one depot at Pardoe; one depot at Filer, with depot grounds; one depot at Harrisville, with grounds for depot sidings, engine-house, and turn-table; one depot at Branchton, with grounds for turn-table and switches; one depot at Wicks' Station; one depot at Bovard's, with depot grounds; one depot at Roy; one depot at Hillyard's, with grounds for depot, engine-house, turn-table, &c.

These various depot grounds and buildings are all held by the company, excepting the one at Shenango, which is owned jointly with the New York, Pennsylvania and Ohio Railroad Company, and the one at Mercer, which is held jointly with the Buffalo, New York and Philadelphia Railroad Company.

283 At Shenango on the line of the said road are located its car-shops, machine-shops, blacksmith-shops, casting-shops, sand-house, and other buildings, shops for the purpose of repairing and building the cars and locomotives; also offices of said railroad company. The main offices of the company are located at Greenville, in Mercer county, and consist of a suite of rooms leased, in which are three iron safes and desks, chairs, and other furniture, and also the books of the said company, containing the accounts thereof.

Along at different places on the road and in connection with the same are trestles, engine-houses, turn-tables, water-tanks, track scales, and various other appurtenances and machinery, fixtures and buildings connected and used with said railroad.

The motive power and rolling-stock is as follows: Nine locomotives, five passenger coaches, two combination cars—passenger and baggage—one baggage and mail car, four caboose cars, five box cars, one hundred and thirty gondola cars, eleven flat cars, three stock cars, thirty-seven dump cars (coal), one tool car, one derrick car, sixteen hand cars, and fifteen push cars.

Three of the above locomotives and four of the above passenger coaches are held by said defendant company under a car-trust contract with the Pittsburgh Car Trust Company, dated October 1st, 1883, on which contract the balance due said car-trust company will on April 1st, 1886, be twenty-two thousand three hundred
284 and eighty-five and seventy-one hundredths dollars. Of the above gondola cars one hundred and five are held under a car trust contract with the Bristol and South Wales Railway Wagon Company, Limited, the Union Rolling Stock Company, Limited, and W. Adams.

The said company also owns fifty-seven miles of telegraph wire and fifty-four miles of poles, with batteries, switch-boards, box-relays, keys, sounders, and other machinery necessary to operate a telegraph

line, which is used in connection with the business of said railroad company.

In addition to the property hereinbefore described the said defendant company owns a large amount of personal property which cannot be accurately inventoried, because the same is constantly changing, and which said property consists, among other things, of the following:

(1). Tools and materials in the track department, such as axes, saws, picks, mattocks, shovels, tamping-bars, gauges, levels, wrenches, and wheel-barrows, lanterns, and spike-hammers.

(2). Machinery in shops at Shenango, such as engine and boiler, planer, lathes, presses, dies, bolt-cutters, &c.

(3). Materials and supplies at Shenango, such as wheels, axles, buffers, machine nuts, wrought washers, bolts, brass trimmings, locomotive and car springs, lumber, gas-fixtures, plates, painters' material, engine-house tools, machine-shop tools, and car-shop tools.

(4). Station furniture in the different stations of the de-
285 fendant company, such as desks, copying-presses, chairs, stoves, safes, ticket-cases, scales, trucks, and station books and blanks, and station benches or seats.

(2nd). That the said Shenango and Allegheny Railroad Company, being such lawful corporation as aforesaid, under and by virtue of the laws of the State of Pennsylvania, and especially by virtue of an act of the General Assembly of the said State entitled "An act to incorporate the Bear Creek Railroad Company," approved the 20th day of March, 1865, did heretofore, on or about the first day of April, 1869, make, acknowledge, execute, and deliver, under its common corporate seal, a mortgage or deed of trust, bearing date April 1st, 1869, to Henry Rawle, trustee, to secure the payment of the bonds of the said Shenango and Allegheny Railroad Company, amounting in the aggregate to the sum of one million ($1,000,000) dollars, with coupons or interest warrants thereto attached for the payment of interest at the rate of seven (7 %) per cent. per annum, payable semi-annually on the first days of October and April in each and every year until the maturity of the said bonds, and that said bonds mature and become payable on the first day of April, 1889.

That the said trust was duly accepted by the said Henry Rawle, trustee, and that the said mortgage was duly recorded in the office of the recorder of deeds in the county of Mercer, in the State of Penn-
sylvania, on the 17th day of April, 1869, in mortgage book
286 "C," pages 456, etc., and also in the county of Butler, in the said State of Pennsylvania, on April 23rd, 1869, in mortgage book 3, vol. L, page 85, the said counties of Mercer and Butler being the ones in which the said railroad company's property, real personal, and mixed, was located.

That under the terms of the said mortgage the said Shenango and Allegheny Railroad Company did grant, bargain, sell, and convey and transfer unto the said Henry Rawle, trustee, and his successors in the trust, all and singular the continuous railroad extending from its western terminus, the junction with the Erie and Pittsburgh railroad in the township of West Salem, in the county of Mercer and

the State of Pennsylvania, southeastwardly for a distance of forty (40) miles to a point in the county of Butler, in said State, both partially constructed and part- unfinished, and then in process of construction or thereafter to be constructed and finished, between the points aforesaid, comprising the line of the said Shenango and Allegheny Railroad Company, including all the railways and rights of way, depot grounds, and other lands owned or held by the said company; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, water-tanks, and other buildings, and all machine-shops or other shops held or acquired for use in connection with said railroad or the business thereof, and including all
287 locomotives, tenders, cars, and other rolling-stock or equipment, and all machinery, tools, implements, fuel, and material for constructing, operating, repairing or replacing the said railroad or any part thereof, or any of its equipments or appurtenances, whether then held or thereafter acquired, and any lateral or branch roads, with their appurtenances, that may be hereafter constructed by or come into the possession of the company along the line of the aforementioned forty lines of main line or connected therewith, all of which things were thereby declared to be appurtenances and fixtures of the said railroad; and also all franchises connected with or relating to the said railroad or the construction, maintenance, or use thereof, then held or thereafter to be acquired by the said Shenango and Allegheny Railroad Company, and all corporate and other franchises which were then, or might thereafter be, possessed or exercised by the said Shenango and Allegheny Railroad Company, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof.

And, among other things, it was provided in and by the said mortgage or deed of trust to the said Henry Rawle, trustee, that in case default should be made by the said Shenango and Allegheny Railroad Company in the payment of any interest on any of the said bonds covered by the said mortgage, and if said default should continue for a period of six months, that then
288 it should be lawful for the said trustee to enter in and upon and take possession of the said mortgaged property, and then it should also be lawful for the said trustee upon such default, either with or without entry, to sell the said mortgaged property, or upon the written request of the holders of one-half of the said bonds issued under the said mortgage then outstanding and unpaid it should be his duty to sell said mortgaged property; and also that it should be the duty of the said trustee, on default being made in the payment of any of the interest on any of the bonds for a period of six months, to exercise and enforce the rights of the bondholders under the said mortgage to the said Henry Rawle, trustee, upon the request in writing to the said trustee so to do by the holders of not less than three hundred thousand dollars of said bonds.

That the said Shenango and Allegheny Railroad Company, being

authorized so to do as aforesaid, did issue to various parties the total amount of the bonds under said mortgage, which bonds at their face value aggregate the sum of one million ($1,000,000) dollars, and to which were annexed interest warrants or coupons for the payment of interest at the rate of seven per cent. per annum thereon, payable semi-annually on the 1st days of April and October in each and every year until the maturity of the said bonds.

That all the property covered by the said mortgage to the said Henry Rawle, trustee, is within the western district of Pennsylvania and within the jurisdiction of this court.

And the court do further find, adjudge, and decree that
289 the said Shenango and Allegheny Railroad Company have defaulted in the payment of the interest on all of the said bonds, aggregating in amount to one million ($1,000,000) dollars, at the following times: All the interest maturing on the 1st day of October, 1884, the total amount of which at the face value of the bonds aggregates thirty-five thousand ($35,000) dollars; the total amount of interest due on the 1st day of April, 1885, the total amount of which at the face value of the bonds aggregates the sum of thirty-five thousand ($35,000) dollars.

That the default in the non-payment of interest on the 1st day of October, 1884, and on the 1st day of April, 1885, has continued for a period exceeding six months, and that due demand was made for the payment of the said interest on the 1st day of October, 1884, and the 1st day of April, 1885; that the said company wholly neglected and refused to provide for or pay any of the said interest, and the said neglect and refusal and non-payment still continues.

That the said Shenango & Allegheny Railroad Company has also neglected and refused on demand made to pay any of the interest due on the 1st day of October, 1885, amounting in the aggregate to the sum of thirty-five thousand ($35,000) dollars, and also the interest due on the 1st day of April, A. D. 1886, amounting in the aggregate to the sum of thirty-five thousand ($35,000) dollars, and that said default still continues.

290 That in accordance with the provisions of the said recited mortgage or deed of trust to the said Henry Rawle, trustee, the holders of bonds secured by the said mortgage or deed of trust, aggregating in amount more than one-half of all the bonds issued under and covered by said mortgage to the said Henry Rawle, trustee, did present their written request to the said Henry Rawle, trustee, praying that he should proceed and sell under the terms of the said mortgage the said mortgaged property, and that said written request and demand was made after the 1st day of April, 1885, and prior to the 1st day of June, 1885, and the then holders of the said bonds, aggregating in amount more than one-half of the bonds outstanding and covered by the mortgage, were also then and there the owners and holders of all the interest warrants or coupons belonging to all of the said bonds, especially all the interest warrants and coupons for interest due October 1st, 1884; that the holders of the bonds secured by the said mortgage, amounting in the aggregate to more than three hundred thousand ($300,000) dollars of the

said bonds, and at the same time holding the interest warrants or coupons thereunto belonging and unpaid, and especially the interest warrants due October 1st, 1884, did also present to the said Henry Rawle, trustee, their written request that he, as trustee aforesaid, would immediately institute proceedings in equity for the collection of the principal and interest of all the bonds secured by the
291 said mortgage, and also for the foreclosure of the said mortgage or deed of trust, and that said written request was made after the 1st day of April, 1885, and prior to the filing of the cross-bill in this case.

And this court does further find, adjudge, and decree that under and in accordance with the provisions of the said mortgage or deed of trust to the said Henry Rawle, trustee, that the said trustee is entitled, either with or without entering upon and taking possession of the said mortgaged property, to sell the same in accordance with the terms of the said mortgage and by said sale to give to the purchaser thereof, his or their heirs, executors, or administrators, a good and sufficient title in fee-simple for all and singular, the property of the said defendant company, real, personal, and mixed, covered by the said mortgage or deed of trust, and that the said sale when made shall be a perpetual bar, both in law and equity, against the said The Shenango and Allegheny Railroad Company, and all persons claiming or to claim the said premises or any part thereof by, from, through, or under the said Shenango and Allegheny Railroad Company.

And the court do further find, adjudge, and decree that the said trustee, under and in accordance with the provisions and terms of the said deed of trust and mortgage, is entitled to proceed and foreclose the said mortgage, and that the said property so mortgaged be sold, and on any sale made under the provisions of the said mortgage or deed of trust the purchaser or purchasers thereof shall
292 not be liable to see to or to be responsible for the appropriation of the purchase-money or be obliged to inquire into the necessity or expediency or authority of or for such sale.

(3rd.) And this court do further find, adjudge, and decree that heretofore, to wit, on the 1st day of July, 1877, the defendant, The Shenango and Allegheny Railroad Company, under and by virtue of the laws of the State of Pennsylvania, did, under its common corporate seal, execute, acknowledge, and deliver to John H. Devereux, trustee, another mortgage or deed of trust, for the purpose of securing the payment of its certain bonds, aggregating in amount the sum of one million ($1,000,000) dollars, due and payable on the 1st day of July, 1907, with interest warrants or coupons thereto attached, for the payment of interest at the rate of seven per cent. per annum until the maturity of the said bonds, and payable on the 1st days of July and January in each year.

That the said mortgage or deed of trust was duly accepted by the said John H. Devereux, and was recorded in the recorder's office in the county of Mercer and also in the county of Butler.

That in and by the terms of the said mortgage to the said John H. Devereux, trustee, the said The Shenango and Allegheny Rail-

road Company did grant, bargain, and sell to the said J. H. Devereux, trustee, and his successor or successors in trust,
293 "the entire railroad, built and to be built by the said Shenango and Allegheny Railroad Company, from its junction with the Atlantic and Great Western Railroad Company, near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley railroad on the east side of the Allegheny river, together with all its branches, extensions, side tracks, switches, and turnouts, built and to be built, and also all the lands, rights, franchises, and appurtenances thereunto belonging, and also all engines, locomotives, cars, tools, machinery, rolling-stock, supplies, and personal and real property of every name and nature connected with or belonging to the said company on or along its said railroad and used by it in operating its said railroad, whether said property is now in existence or shall hereafter be built or constructed, and whether said property has now been acquired by the said company or shall be hereafter acquired by the said company; and also all the corporate rights and franchises of the said railroad company."

And among the terms of the said mortgage it was provided that if at any time the said Shenango and Allegheny Railroad Company should suffer and permit any of the coupons aforesaid to remain due and unpaid and in arrears for a period of eighteen months after the same shall become due and payable, and after due demand for payment shall be made at the place where the said coupons are payable, then the principal of the said bonded indebtedness shall, at the option of one-tenth in amount of the holders thereof, become due and payable, and the holder or holders thereof, in the
294 name of the said John H. Devereux, trustee as aforesaid, his successor or successors, may maintain an action at law or in equity to recover the amount of said bonds and accrued interest then outstanding; and also upon the facts being judicially ascertained by any court of record of competent jurisdiction that the said Shenango and Allegheny Railroad Company has been in default in payment of any of the coupons aforesaid for the period of eighteen months, that the said John H. Devereux, trustee, or his successor or successors in office, shall, at the request of the holders of any of the said bonds, proceed to foreclose the said mortgage, and shall also be entitled to the use and possession and income of the said property, and also that the said John H. Devereux, as trustee as aforesaid, is entitled in such case where a default is made as aforesaid, after giving notice in writing to the board of directors of the said Shenango and Allegheny Railroad Company, served upon the president or secretary, or other acting officer of the said company, and publishing notice in one or more newspapers, as therein provided, to sell at public auction at the junction of the said railroad of the said company with the said Atlantic and Great Western Railroad Company near Greenville aforesaid, the entire real and personal property of said defendant company included in or covered by the said mortgage, and to execute to the purchaser or purchasers thereof full, complete, and legal conveyance for the same.

295 And this court does further find and decree that there were issued by the said Shenango and Allegheny Railroad Company, and purporting to be under the terms of the said Devereux mortgage, bonds aggregating in amount three hundred and seventy-five thousand ($375,000) dollars, and that the same are all outstanding, and that of the said bonds a sum aggregating about two hundred thousand ($200,000) dollars were issued prior to January 1st, 1878.

That no interest whatever has been paid on any of the said bonds so outstanding, but the said company continously from the first day of January, 1878, down to and until this time have refused and neglected to pay any of the coupons of the said bonds, although due demand for the payment of each and all of said bonds was made at the place where said coupons were made payable, and that said default in non-payment of interest has continued for a period exceeding eighteen months, and that the holders of all the said outstanding bonds or indebtedness secured by the said mortgage or deed of trust to the said Devereux, trustee, have elected and determined that the principal of the said bonded indebtedness shall become due and payable forthwith, and that said election and determination was made prior to the filing of the amended bill in this case.

And this court does further find, adjudge, and decree that the said John H. Devereux, trustee, now John M. Shedd, trustee, his successor, is entitled under the provisions of the said mortgage to proceed and foreclose said mortgage, and that the said Devereux,
296 trustee, is also entitled and authorized under the terms of the said mortgage and the facts hereinbefore found by this court, after having given notice in writing and publication, as provided in the said mortgage, to sell at public auction, at the junction of the said Shenango and Allegheny railroad with the said Atlantic and Great Western railroad, near Greenville, as aforesaid, the entire property, real, personal, and mixed, covered by the said mortgage, and to execute to the purchaser or purchasers thereof a full, complete, and legal conveyance for the same.

(4th.) That said mortgage to the said Henry Rawle, trustee, and the said mortgage to the said John H. Devereux, trustee, are valid and existing liens upon so much of the property, real, personal, [and] mixed, of the said defendant, The Shenango and Allegheny Railroad Company, as was thereby lawfully conveyed to the said respective trustees, and which thereafter became vested in the said trustees respectively as after-acquired property, according to the terms of said mortgages, or either of them, and that said liens originated and existed from the recording [of] the said mortgages aforesaid.

(5th.) This court does further find, adjudge, and decree that there are now outstanding, secured by the said mortgage to the said Henry Rawle, trustee, bonds aggregating in amount at their face
297 value one million ($1,000,000) dollars, with the interest coupons or warrants for the payment of interest from the first day of October, 1884, down to date.

And the court does further find, adjudge, and decree that there are outstanding, secured by the said mortgage to the said John H. Devereux, trustee, bonds aggregating in amount three hundred and

seventy-five thousand ($375,000) dollars, with all interest warrants or coupons for the payment of interest from the date of said bonds down to this date.

(5½.) And this court does further find and decree that there are outstanding receivers' certificates issued under the authority of this court, amounting in the aggregate to the sum of one hundred and fifty-five thousand eight hundred and forty-nine and eighty-seven one-hundredths ($155,849.87) dollars, which sum, with interest at the rate of six per cent., is justly due and payable. And that the said certificates, together with the costs, charges, and lawful expenses in this cause, and the costs, charges, expenses, and liabilities of the receivership, including the costs of the cause of Young *vs.* The Shenango and Allegheny Railroad Company in this court, and all just and proper compensations, expenses, and allowances to the said receiver and to the trustees under the said mortgages, and to any of the parties to the said cause, are entitled to be paid out of the proceeds of the said sale in the first instance, and are to be deducted therefrom before the payment of any dividend upon the bonds secured by the said mortgages, or either of them, or to any other
298 creditor of the said Shenango and Allegheny Railroad Company.

(6.) And this court do now authorize, order, and empower the said Henry Rawle, trustee, under the provisions of the said mortgage to him, to proceed and sell all the property covered by the said Rawle mortgage at public auction at Shenango, at the junction of the Shenango and Allegheny railroad with the Atlantic and Great Western railway, now the New York, Pennsylvania and Ohio railroad, near Greenville, Mercer county, Pennsylvania, on the 25th day of January, A. D., 1887, at twelve o'clock, noon, and directs the said trustee that he shall give public notice of the said time and place of sale by advertisements published not less than three times a week for ninety (90) days in one or more newspapers in the cities of New York, Philadelphia, Erie, and Meadville, and to then and there sell said property to the highest and best bidder, and to make report of such sale to this court.

(7.) And this court authorizes and empowers the said John M. Shedd, trustee, to give notice in writing to the board of directors of the Shenango and Allegheny Railroad Company by serving such notice upon the president or secretary, or other acting officer
299 of the said company, and also by publishing notice in one or more newspapers published in the cities of New York, Pittsburgh, and Cleveland not less than three times a week for the period of ninety (90) days prior thereto, and then to proceed and sell at public auction at Shenango, at the junction of the said railroad with the Atlantic and Great Western railroad, near Greenville, Mercer county, Pennsylvania, the entire property, real, personal, and mixed, covered by the said mortgage, and said sale shall be to the highest and best bidder, and shall be on the 25th day of January, 1887, at twelve o'clock, noon, and make report of said sale to this court.

(8.) And this court does further find, adjudge, and decree that all the property, real, personal, and mixed, of the said Shenango and Allegheny Railroad Company is subject to the lien of either the said mortgage to the said Henry Rawle, trustee, or *to* the said mortgage to the said John H. Devereux, trustee, as also to the
300 outstanding receivers' certificates, and that there are conflicting claims in reference to the priority of liens and their extent, and that there are conflicting claims between the said mortgagees and some of the bondholders in reference to the number of bonds legally outstanding and unpaid under the said respective mortgages to the said Henry Rawle, trustee, and to the said John H. Devereux, trustee, and also that there are conflicting claims in reference to the amounts of money due on the said respective bonds outstanding under the said mortgages which the holders thereof are entitled to receive; and this court also finds that the Shenango and Allegheny Railroad Company is insolvent, and that it would be to the best interests of all parties concerned that the said property, real, personal, and mixed, of the said defendant company should be sold; and it appearing to the said court that such sale by this court of the said property is prayed for under the amended bill filed by the said John M. Shedd, trustee, and also in the cross-bill filed by the said Henry Rawle, trustee, this court do now, upon motion of the solicitors for the said John M. Shedd, trustee, and also upon motion of the solicitors of the said Henry Rawle, trustee, the solicitors for the company and the receiver acquiescing herein, do now order, adjudge, and decree that the said Henry Rawle and John M. Shedd be, and they are hereby, appointed special commissioners by this court to make sale of all and singular the property, real, personal, and mixed, including the franchises of the said Shenango and Allegheny Railroad Company; said sale shall be on the
301 25th day of January, 1887, at Shenango, the junction of the Shenango and Allegheny railroad with the Atlantic and Great Western, now New York, Pennsylvania and Ohio railroad, near Greenville, Mercer county, Pennsylvania, at twelve (12) o'clock noon, and it shall be at public auction, and the sale shall be made to the highest and best bidder, and report thereof made to this court.

(9th.) That all the said property of the defendant company shall be offered as a whole under and by virtue of the powers of sale in the said mortgage of the said Henry Rawle, trustee, and under and by virtue of the powers of sale in the said mortgage to the said John H. Devereux, trustee, of whom John M. Shedd is now the successor, and under and by virtue of all the authority and power vested in this court as a court of chancery to order the sale of the said property under the facts and circumstances of this case.

(10th.) That the property shall not be sold for a less sum than six hundred and twenty-five thousand ($625,000) dollars, and that at the time of the said sale the person or persons purchasing the said property shall pay for the same in manner as follows: Fifty thousand ($50,000) dollars cash, and the entire balance of the purchase-money within sixty days after the said sale shall have been

confirmed by the court, and upon the execution and delivery to the said purchasers of the proper conveyances and assurances from the said trustees and special commissioners making the said sale; that said balance of purchase-money may be paid in manner as follows:

302 ("A.") In cash.

("B.") The persons owning and holding receivers' certificates issued under the authority of this court may use the same in payment of the purchase-money, and the said certificates shall be received by the said trustees and masters as equivalent to cash.

(C.) As to so much of the balance of the purchase-money as may exceed the said cash payment and the receivers' certificates, Rawle bonds and coupons, and Devereux bonds and coupons may be used by the purchaser as cash to the extent of the estimated dividend payable on the said bonds and coupons held by such purchaser out of such excess. In estimating the said dividend provisionally the holders of Rawle bonds with coupons shall be considered as entitled to receive sixty (60) per cent. of the fund, and the holders of the Devereux bonds and coupons shall be considered as entitled to receive forty (40) per cent. of the fund. Such adjustment of the distribution, however, between the holders of the said bonds, respectively, is hereby declared to be provisional only and solely for the purpose of convenient payment of the purchase-money by purchasers who may be holders of such bonds, and is not to be construed as interfering in any way with the ascertainment and adjustment of the dividend actually to be paid on said bonds upon a distribution of the funds by a master and decree of this court, and to that end it is hereby further ordered that any purchaser or

303 purchasers claiming the right to use the said dividend to payment in part of the purchase-money shall give bond to the trustees, with proper security, to be approved by the court, to make any further cash payment which may be required upon the final settlement of the said dividends. Should the purchaser or purchasers thereof fail to comply with the terms of sale and pay the balance of the purchase-money within the time hereinbefore specified, the entire amount of the cash payment hereinbefore required to be made shall be forfeited by him or them, and shall belong to and be applicable to the expenses of resale and to the costs of this suit or to the payment of bonds, as the court may direct.

(11.) Upon the confirmation of the said sale by this court and upon a compliance with the terms of sale, as aforesaid, by the purchaser, the said purchaser shall then be entitled to receive proper conveyances for the said property so sold and also the possession of the said property, and shall hold the same freed and discharged from the lien of the said mortgages and receivers' certificates and from all costs, charges, claims, and liabilities arising in this litigation.

(12.) That the said trustees and commissioners shall make report to this court of all sums of money received by them, and that all cash so received, less actual disbursements, as hereinbefore authorized, and also receivers' certificates and all bonds and coupons re-

ceived by them, shall be deposited in the registry of this
304 court and subject to its further orders, and power is hereby given, in case of necessity, to the said trustees and commissioners to adjourn the sale from time to time and to make report thereof to this court.

(13th,) All disputes and controversies between the two mortgage trustees, the said Rawle and the said Shedd, or the bondholders under the said two mortgages, touching the extent of the lien of the said mortgages, respectively, or the priority of the lien of the said mortgages, respectively, as well as all questions concerning and touching the amounts due bondholders, respectively, under the said two mortgages are hereby expressly reserved for future consideration and determination unaffected by anything in this decree.

By the court:

And now, October 14th, 1886, to each and all the foregoing findings and to said decree The First National Bank of Cleveland, Ohio, Second National Bank of Erie, Pennsylvania, First National Bank of Greenville, Pennsylvania, The Mahoning National Bank of Youngstown, Ohio, Wick Bros. & Co., of Youngstown, Ohio, and Thomas H. Wells, of the same place, object and the objection is overruled, and to each and all of which the said parties last named except.

M. W. ACHESON.

305 In the Circuit Court of the United States, Western District of Pennsylvania. In Equity. May Sessions, 1884.

CHARLES L. YOUNG and HENRY W. TYLER, Citizens of Great Britain, *vs.* THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation Incorporated and Doing Business Under the Laws of the State of Pennsylvania.	No. 17

The above-named plaintiffs bring this their bill against the above-named defendants, and thereupon say as follows:

1. The Shenango and Allegheny Railroad Company was incorporated by an act of Assembly of the State of Pennsylvania, approved March 20th, 1865, under the name and title of the Bear Creek Railroad Company, and has been and now is doing business in the said State. The name of the said company was subsequently changed by act of Assembly, approved April 9th, 1867, to the Shenango and Allegheny Railroad Company. The rail-
306 road of the said corporation extends from Greenville, in the State of Pennsylvania, on the line of the New York, Pennsylvania and Ohio Railway Company, through Butler, Mercer, and Venango counties, in the said State, to Hillyard's, Coalville and other points where coal mines and coke furnaces are being worked and operated. The main line of a length of forty-seven miles, together with sidings of a length of twelve miles and branches of the further

length of twelve miles, is owned and operated by the said railroad company, and the said company also operates the road known as the West-End and Shenango Connecting railroad, which runs from Branchtown to Butler, in the same State, a distance of twenty-five miles, main track and sidings. The length of railway, therefore, operated by the said Shenango and Allegheny Railroad Company is in all ninety-one miles. The lines of railroad operated by the said defendant are very valuable, and if managed to the best advantage are, in the opinion of competent persons, capable at present of producing a net revenue considerably more than sufficient to meet its indebtedness, and such net revenue is likely to steadily increase.

2. The capital stock of the said Shenango and Allegheny Railroad Company is two hundred thousand dollars. The incumbrances upon its road and property are bonds bearing interest at the rate of seven per cent. per annum, secured by a mortgage, and divided into two series, of which the first series amounts to one million dollars
307 and matures April 1st, 1889, and the second series to two hundred thousand dollars and matures July 1st, 1907.

3. The plaintiff further shows to the court that the said mortgage was executed and delivered April 1st, A. D. 1869, in pursuance of lawful authority, and was made to trustees as mortgagees in trust for the holders of the bonds of the said company therein set forth, by which the railroad, lands, appurtenances, franchises, rights, and property of the said corporation was conveyed to the trustees to secure the payment of the said bonds, as in and by the said mortgage is more fully and at large set forth. The plaintiffs are the owners of the entire second issue of $200,000 first-mortgage bonds above mentioned. The plaintiffs are likewise the owners of 2,836 shares of the capital stock of the said company out of the total of 4,000 shares composing the entire said capital stock. The said plaintiffs became the owners of the said stock and bonds under a certain deed of trust dated February 6th, 1873 (whereof the provisions are not material to be herein set forth, but which deed the complainants will exhibit to the court if desired).

4. The plaintiffs further show that the sum of ninety-one thousand dollars is now overdue and unpaid upon the semi-annual coupons upon the said two hundred thousand dollars, second series first-mortgage bonds, falling due between the dates of 1st
308 January, 1878, and 1st January, 1884, both inclusive, and that upon nearly one-fifth part of the first series of the said mortgage bonds coupons are now overdue and unpaid between the dates of October 1st, 1882, and October 1st, 1883, both inclusive, amounting to thirteen thousand three hundred dollars ($13,300).

5. In addition to the principal due upon the bonds of the first and second series already stated, the indebtedness of the said company is as follows, viz:

Interest due on bonds of the first series	$85,000
Interest due on bonds of the second series	91,000
Floating debt, being amount due auditor's, vouchers for wages, bills payable, treasurer, Brown and Thomas, N. Y. L. E. and W. R. R. Company, and sundry individual companies	200,000
Car-trust bonds due and unpaid for 8 months	12,000
Car-trust bonds not matured	60,000
The total of the unfunded debt of the said company amounts therefore to	$448,000

Of these creditors those representing claims aggregating three hundred thousand dollars of the said indebtedness are urgent and are pressing for payment, and are likely to proceed at any moment against the property. Of the said claims, at least thirty-five
309 thousand dollars are for wages. The company does not possess adequate resources, either in cash or by the use of its credit, to meet these obligations as they mature.

6. The plaintiffs further show that unless provision is made for the payment of wages and other pressing claims numerous suits will be brought and the property of the company will be sacrificed and the security of the plaintiffs be impaired and endangered, not only by sales of the assets of the company in parcels under numerous executions and the consequent loss and waste resulting therefrom, but also by possible interference with the running of the roads controlled by the company whereby its earning capacity may be impaired and diminished.

Wherefore your orators need and pray equitable relief as follows:

(1.) That the rights of the plaintiffs shall be ascertained and declared.

(2.) That the property of the company defendant shall be administered and applied in the manner and for the purpose to which it ought, under the circumstances, to be applied, and so that the same may be justly and equitably applied towards the payment of its debts.

(3.) That a proper person be appointed to take possession, control, and care of the property of the said corporation defendant which is or may be within the jurisdiction of this court, and that such orders and decrees in the nature of writs of injunction or otherwise
310 be made as may be necessary in the premises.

(4.) That the plaintiffs shall have such other and further relief as to the court shall seem meet in the premises.

(5.) And that a writ of subpœna to the above-named defendant shall be issued commanding it to appear and answer this bill and stand [to] perform, and abide such order and decree as to your honors in the premises shall seem meet.

And your orators will ever pray, &c.

CHARLES L. YOUNG AND
HENRY W. TYLER,
By THOS. H. Y. EDSALL,
Their Agent.

311 STATE OF NEW YORK, }
City & County of New York, } *ss:*

Thomas Henry Edsall, being duly sworn according to law, deposes and says that the facts set forth in the foregoing bill, so far as the same are stated of this deponent's knowledge, are true, and, so far as the same are stated on information and belief, are believed by him to be true. Plaintiffs are residents of England, and are not in this country, and this deponent is their duly authorized agent and representative in this country.

THOS. H'Y EDSALL.

Sworn to and subscribed before me, a notary public in and for the said city and county, this fourteenth day of March, A. D. 1884.

CHAS. BULKLEY HUBBELL,
Notary Public (128), *City and County of New York.*

312 *Bill.*

May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER }
vs. } No. 17.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. }

Filed M'ch 15, 1884.

H. D. GAMBLE, *Clk.*

313 In the Circuit Court of the United States, Western District of Pennsylvania. In Equity. May Sessions, 1884.

YOUNG *et al.* }
vs. } No. 17.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. }

And now, to wit, March 15th, 1884, this cause came on to be heard on bill and affidavits upon motion for appointment of a receiver, and was argued by counsel; and thereupon, after due deliberation, it was ordered, adjudged, and decreed that Thomas Powell Fowler, Esquire, hereby appointed receiver of all the property and estate, real and personal, of the said Shenango and Allegheny Railroad Company of whatever kind or description and wheresoever situate, including all locomotives, cars, and other rolling stock, tools, machinery, depots, buildings, fixtures, personal property of all sorts and kinds on hand, at said depots and elsewhere, all books of account, money, debts, things in action, bonds, mortgages, deeds, writings, leases, muniments of title, bills receivable, rents, profits,
314 and income of the premises accrued and to accrue, as well as all rights, easements, privileges, and franchises of the said corporation defendant.

And it is further ordered that the said receiver be and [is] hereby vested with all the powers, duties, and obligations of receivers according to the rules and practice of this court, and that the said receiver be hereby authorized and directed to keep the railroads, with

their branches and sidings now operated by the said company defendant, employed and used in the manner they have been heretofore used and employed so far as the receiver may deem it to be for the best interest of all parties interested as creditors, and that he with all convenient speed ascertain and report the state, condition, and circumstances of the property and of the debts and liabilities charged thereon or owing by the corporation defendant, and to apply for further direction as to the management of the said property, and meanwhile to continue the operation of the said railroads, branches, and sidings now operated by the said corporation defendant, and to receive and collect all freights, earnings, and profits of all sorts, kinds, or description, either for cash or on the usual credits, and out of the net proceeds thereof to pay the wages, interest, taxes, rents, freights, and debts for supplies furnished within the last four months, whether on open account or closed, by bills payable.

And it is further ordered that the said receiver be authorized and empowered to borrow money on receivers' certificates,
315 not to exceed one hundred thousand dollars, to be applied to the payment of wages, interest, taxes, and any preferred claims, and that all moneys which may be so raised by said receiver by loan shall be entitled to the same priority in lien as the rents to the payment of which the same shall be applied, and shall be paid out of the proceeds of the said property according to said priority and preference, said certificates to bear interest not exceeding the rate of six per cent. per annum.

And it is further ordered that the bond of the said receiver in the sum of one hundred thousand dollars, conditioned that he shall well and truly perform the duties of his office and duly account for all money and property which shall come into his hands, and abide by and perform all things which he is directed to do, be, and the same is hereby, approved, and ordered to be filed in the office of the clerk when approved by one of the judges of this court.

And it is further ordered that an injunction do issue against the defendant and all persons claiming or acting by, through, or under it, and all other persons, to restrain them from interfering with the said receiver in taking possession of and managing the said property, with leave to any party in interest to apply for further directions.

By the court:

316 *Decree Appointing Receiver of Defendant Company.*

May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER
vs. } No. 17.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY.

Filed Mch 15, 1884.

317 UNITED STATES OF AMERICA,
Western District of Pennsylvania:

The United States of America to The Shenango and Allegheny Railroad Company, a corporation incorporated and doing business under the laws of the State of Pennsylvania, Greeting:

We command you and every one of you that you appear before our judges of our circuit court of the United States of America for the western district of Pennsylvania, at the city of Pittsburgh, in said district, on the first Monday of May next, to answer the bill of complaint of Charles L. Young and Henry W. Tyler, citizens of the Kingdom of Great Britain, filed in the clerk's office of said court, in the city of Pittsburgh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default; and this you are in nowise to omit, under such penalties as are inflicted by the laws of the United States.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Pitts-
318 burgh aforesaid, this 20th day of March, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 108th.

H. D. GAMBLE, *Clerk.*

MEMORANDUM.—The above-named defendant is required to enter an appearance in the above-entitled cause on or before the first Monday of the month ensuing twenty days after the service of this writ, otherwise the complaint may be taken against it as confessed and a decree entered accordingly.

H. D. GAMBLE, *Clerk.*

April 14, 1884, served the within chancery subpœna on The Shenango and Allegheny Railroad Company by leaving a true and attested copy thereof with an adult member of the family of I. D. Stinson, treasurer of said company, at his residence in Greenville, Pa., and by making known the contents thereof to P. E. McCray, auditor of said company, and leaving with him a true and attested copy of said writ.

JAS. S. RUTAN,
U. S. Marshal.
Per R. K. CAMPBELL, *D'p'y*

319 *Chancery Subpœna.*

Circuit Court of the United States. May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Marshal's [fees]:

Service	5	00
Mileage	5	10
	10	10

WAYNE MacVEAGH,
Complainants' Solicitor.

320 C. C. U. S., Western District of Pennsylvania. May Term, 1884.

YOUNG
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

And now, April 9th, 1884, on motion of Wayne MacVeagh, of counsel for the plaintiffs, it is ordered that in order to remove any possible ambiguity or difficulty of understanding the true intent and meaning of the decree heretofore made appointing a receiver in their case, and, among other things, authorizing him to issue certificates for money borrowed to pay interest upon the mortgage indebtedness of said company, said decree is so modified as to expressly declare that the money borrowed upon said certificates to pay the interest upon the indebtedness secured by the first mortgage upon said property shall take rank and lien only after and behind said mortgage, and not upon an equality with it, provided that nothing herein contained shall in any manner affect the priority as first lien upon said property of certificates issued by said receiver for the payment of wages due on the date of said decree or for supplies furnished to said company within four months prior to the date thereof, or for the payment of taxes lawfully assessed upon the said property.

W. McKENNAN,
Cir. Judge.

321 *Modification of Decree of March 15, 1884.*

May Term, 1884.

CHARLES L. YOUNG
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Filed April 11, 1884.
Dated April 9, 1884.

322 Know all men by these presents that we, Thomas Powell Fowler, Benjamin F. Dunning, of the city of New York; James T. Blair, of the county of Mercer, Pennsylvania, and the Guarantee Trust and Safe Deposit Company, of the city of Philadelphia, are bound jointly and severally to the United States of America in the sum of one hundred thousand dollars; to which payment, well and truly to be made, *they* bind *themselves*, *their* and each of *their* executors and administrators, jointly and severally, firmly by these presents. Whereas the said Thomas Powell Fowler has been appointed by the circuit court of the United States for the western district of Pennsylvania receiver of the Shenango and Allegheny Railroad Company, as appears by the decree of said court made March 15th, A. D. 1884: Now, the condition of this obligation is such that if the said Thomas Powell Fowler, receiver as aforesaid, shall and will well and truly *and* perform the duties of said office, and duly account for all money and property which shall come into his hands, and abide by and perform all the things which he is directed to do by this court, this obligation to be null and void; otherwise to remain in full force and virtue.

Witness our hands and seals March 17, 1884.

THOMAS POWELL FOWLER. [SEAL.]
BENJAMIN F. DUNNING. [SEAL.]
JAS. T. BLAIR. [SEAL.]
GUARANTEE TRUST & SAFE DEPOSIT CO.,
—— ——, *Pres't.*
Attest: —— ——, *Sec'y.*

Witness (present) as to Thomas Powell Fowler, Benjamin F. Dunning, and Jas. T. Blair—

WAYNE MacVEAGH.
GEO. TUCKER BISPHAM.
RICHARD WINSHIP.

323 *Bond of Receiver.*

May T., 1884.

CHARLES L. YOUNG and HENRY W. TYLER,
vs.
THE SHENANGO AND ALLEGHENY R. R. CO. } No. 17.

Ap'l 2, 1884, approved.

W. McKENNAN,
Cir. Judge.

Filed April 3, 1884. —— ——.

324 In the Circuit Court of the United States for the Western District of Pennsylvania March Term, 1884 In Equity.

CHARLES L. YOUNG and HENRY W. TYLER, Citizens of Great Britain,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation Incorporated and Doing Business under the Laws of the State of Pennsylvania. } No. 17.

To the honorable the judges of the said court:

The petition of Henry Rawle, trustee, late of the city of Erie, now a resident of Lycoming Co., in the State of Pennsylvania, respectfully shows:

(1st). That a bill in equity by the above-named plaintiffs against the above-named defendant was presented to this honorable court on March 15th, 1884, praying, among other things, that a receiver should be appointed to take possession of all and singular the property of said defendant, The Shenango and Allegheny Railroad Company, and upon a hearing thereof this honorable court, on March 15th, 1884, appointed Thomas Powell Fowler, Esq., receiver
325 of all the property and estate, real and personal, of said Shenango and Allegheny Railroad Company, to which said bill in equity and decree thereon made your petitioner prays leave to refer as occasion may require. Said receiver accepted the said appointment and took possession of the said railroad and its properties, and has ever since remained and is now in possession of the same.

(2nd.) That the said Shenango and Allegheny Railroad Company is a corporation of the State of Pennsylvania, organized under an act of the General Assembly of said State entitled "An act to incorporate the Bear Creek Railroad Company," approved the 20 March, 1865, and the various supplements thereto, the name of Bear Creek Railroad Company being by authority of law changed to that of The Shenango and Allegheny Railroad Company, and its railroad extends from the Erie and Pittsburgh railroad, in Mercer county, Pennsylvania, to a point at or near the mouth of Bear creek, in Butler county, Pennsylvania; the entire main line and extensions or branches as now constructed extending from Greenville, in Mercer county, to Hilliard's, in Butler county. The branches and extensions cover about fifteen (15) miles, and the sidings about ten (10) miles, and said railroad has various appurtenances, such as sidings and branches, and also rolling-stock, consisting of locomotives, cars, etc., more particularly specified as follows: six (6) locomotives, one (1) passenger car, two (2) combination cars, one (1) baggage and mail car, four (4) caboose cars, five (5) box cars, thirty-
326 seven (37) dump coal cars, twenty-five (25) gondola cars, fourteen (14) flat cars, one (1) tool car, one (1) derrick car, one (1) market car, and the company has some interest in three (3) locomotive and one hundred and fifty-six (156) gondola cars bought or leased and partially paid for on what is known as the car-trust

plan, but your petitioner is unable to state specifically what the same will amount to. The said locomotives and cars which the company own are old and of little value.

(3rd). That said railroad company, being duly authorized and empowered so to do, did make and duly execute under its common corporate seal its mortgage or deed of trust, bearing date April 1st, 1869, to your petitioner, as trustee, to secure the payment of the bond of the said company, aggregating in amount the sum of one million ($1,000,000) dollars, with coupons or interest warrants thereto attached for the payment of interest at the rate of seven (7) per centum, payable semi-annually, on the first days of October and April in each and every year until the maturity of the said bonds. The principal of said bonds was payable on the first day of April, 1889, and the principal and interest by the terms of said bonds *was* payable to Henry Rawle, your petitioner, or bearer. The said mortgage was duly delivered to your petitioner on or before the 6th day of April, 1869, and the trust accepted by your petitioner, and the said mortgage was duly recorded in
327 the office for the recording of deeds in the county of Mercer, in the State of Pennsylvania, on the seventeenth day of April, 1869, in mortgage book "C," pages 456, &c., and also in the recorder's office in the county of Butler, in the State of Pennsylvania, in mortgage book No. 3, vol. 1, pages 58, &c., the said counties of Mercer and Butler being the counties in which said railroad, its branches, and sidings are located; that your petitioner hereto annexes and makes part of this petition true and exact copies of said bonds and the form of coupon or interest warrant thereto annexed, and also a true and exact copy of said mortgage.

(4th). That all of the bonds secured by said mortgage, as aforesaid, aggregated in amount the sum of one million ($1,000,000) dollars. Five hundred (500) of the said bonds are each for the sum of one thousand ($1,000) dollars, and one thousand (1,000) of said bonds are each for the sum of five hundred ($500) dollars. To each of said bonds were annexed, respectively, the interest warrants or coupons for the payment of interest at the rate of seven (7) per centum per annum, payable semi-annually on the first days of April and October in each and every year; that in and by said mortgage or deed of trust there was conveyed to your petitioner as trustee, as aforesaid, to secure the payment of the said bonds, and the interest thereon to ac-
328 crue, all and singular the railroad of the said Shenango and Allegheny Railroad Company, extending from its western terminus at the junction with the Erie and Pittsburgh Railroad in the township of West Salem, in the county of Mercer, in the State of Pennsylvania, southeastwardly to a point at or near Bear creek, in the county of Butler, in said State, comprising the line of the said railroad, and including all the railway, rights of way, depot grounds, and other lands owned or held by the said company, all its extensions, tracks, bridges, viaducts, culverts, fences, and other structures, all depots, station-houses, engine-houses, car-houses, freight-houses, warehouses, water-tanks, and other buildings, and all machine shops and other shops, and all locomotives, tenders, cars, and other

rolling-stock or equipments, and all machinery, tools, implements, and materials for constructing, operating, repairing, or replacing the said railroad, or any part thereof, also its equipments, and all lateral or branch roads and extensions then held or thereafter to be acquired, with their appurtenances, and all railroad and branches and sidings thereafter to be constructed, and the franchises connected with or relating to the said railroad company, for the construction and maintenance and use of its railroad, and all the corporate rights and franchises of said company, and all corporate or other franchises which might be thereafter acquired or exercised by the Shenango and Allegheny Railroad Company, with all the tenements and appurtenances thereunto belonging or in any wise appertaining; all of which said railroad and property are situate in said counties of Mercer and Butler.

(5th.) Your petitioner avers that by reason of the facts hereinbefore recited and the delivery of and recording of the said mortgage or deed of trust *that* the same became in April, 1869, is now, and ever since has continued to be, a valid first lien, prior to all other liens and encumbrances, upon all and singular the railroad from Greenville to Hilliard's and the properties, real, personal, and mixed, of said railroad company, and its franchises, side tracks, and branches, to secure the payment of the said bonds, aggregating one million dollars ($1,000,000), and interest thereon, all of which bonds were sold by said railroad company and are still outstanding.

(6th). That in and by the terms of said recited mortgage it was, among other things, provided that, in case default should be made by said Shenango and Allegheny Railroad Company in the payment of any interest on any of the aforesaid bonds covered by the said mortgage, and said default should continue for a period of six months, that then it should be lawful for your petitioner, as trustee, either by himself, his attorney, or agents, to enter in and upon and take possession of all and singular the property mortgaged, and also that it should in said event also be lawful for the said petitioner, either with or without entry, to sell all and singular the property mortgaged; and the said mortgage further provided that in case default having been made and continued as aforesaid, if the holders of one-half of the said mortgage bonds then unpaid should present to your petitioner their written request so to do, it then should be the duty of your petitioner as trustee to sell and dispose of all and singular the premises mortgaged, or intended so to be, and to apply the proceeds of such sale to the payment of the interest then overdue and unpaid, and also to the payment of the principal of said bonds, whether the said principal was then due or not. And it was further provided in and by said mortgage, on like default being made, that it should be the duty of your petitioner, the trustee, to exercise the power of entry or the power of sale, or both, or take appropriate legal proceedings to enforce the rights of the bondholders under the mortgage upon the request in writing, by holders of not less than three hundred thousand ($300,000) dollars of the said bonds and apply the proceeds and pay bonds as aforesaid.

(7th.) That prior to the appointment of the receiver as aforesaid the said railroad company did default at different times in the payment of interest on its said bonds, and that in addition thereto since the appointment of said receiver and on the first day of October, A. D. 1884, the said company wholly neglected and failed and refused on demand to pay any portion of the interest due on the said first day of October, 1884, amounting in the aggregate to the sum
331 of thirty-five thousand ($35,000) dollars, and the said railroad company wholly neglected to pay or to provide for the payment of any portion of the said interest on said October 1st, 1884, at the National Bank of Commerce in New York, or elsewhere, and that this default and neglect has continued for more than six (6) months and continues to the present time. The said railroad company has not paid the interest due on the first day of April, 1885, amounting in the aggregate to the sum of thirty-five thousand ($35,000) dollars, so that in interest alone on said first mortgage only there is now overdue and unpaid the sum of seventy thousand ($70,000) dollars.

(8th.) That in accordance with the terms of said mortgage holders of bonds secured by said mortgage holding in amount more than one-half of all the bonds issued under and covered by said mortgage, their aggregate holding amounting to the sum of six hundred and thirty-three thousand five hundred ($633,500) dollars, and also being the owners and holders of the coupons on said bonds due October 1st, 1884, have presented to your petitioner their written request that your petitioner as trustee shall proceed and sell under the terms of the said mortgage the said mortgaged property, and your petitioner hereto annexes a true and exact copy of said written request made upon him by said bondholders, his *cestui que trustents*, and shows to the court that the said named persons are the *bona fide* holders for value of the said bonds, and of the overdue
332 coupons unpaid on the same, and that the said written request was either signed by the persons holding said bonds and coupons or by his or her duly authorized agent or attorney.

(9th.) Your petitioner further shows that, as appears by the receivers' report to this honorable court, the earnings of the said railroad ever since it has been in the possession of said receiver are insufficient to meet and pay the interest on the said first mortgage bonds in addition to the other expenses and fixed charges, and that there is no likelihood or probability that this condition of affairs will be changed, and that the said railroad company is now, and for some time has been, insolvent; that the indebtedness of the Shenango and Allegheny Railroad Company, as shown by the receivers' report filed in this honorable court on July 11th, 1884, was one million nine hundred and seventy-seven thousand two hundred and twenty-three dollars and sixty-six cents ($1,977,223.66), and this sum has not been decreased since said date.

And that since the appointment of said receiver certificates have been issued by him, which in part, as your petitioner is informed, it will be claimed are prior in lien to the first mortgage, but which claim your petitioner does not admit.

(10th.) That to No. 25, May term, 1884, in this honorable court, John H. Devereux, Esq., as trustee under a second mortgage subsequent in lien to the above-mentioned mortgage of said Shenango and Allegheny Railroad Company, has filed his bill in
333 equity praying a foreclosure and sale of the said railroad; that bonds under the said mortgage were issued, aggregating in amount two hundred thousand ($200,000) dollars, and that no interest has been paid on the same since. No steps whatever, subsequent to the filing of the bill, have been taken in said suit, and your petitioner is not a party thereto.

(11th.) Your petitioner is advised by his counsel that it is his duty to proceed under the written request served upon him, and he desires to so proceed, and sell the mortgaged property under and in accordance with the terms of the said mortgage and the power of sale to him therein given; that sufficient money cannot be realized from the sale of all the personal property of said railroad company to pay the instalment of interest on the first-mortgage bonds due October 1st, 1884.

If your petitioner is enabled at the sale under said power to deliver possession to the purchaser of the property sold, and if he is enabled in his advertisement for sale to state that such will be done, it will enable him to realize much more for the said property. As your petitioner is advised that under the mortgage he has the right to put the purchaser of the railroad into possession of the same, and that the proper mode of so doing will be for himself, the day of the sale by permission of this court, to take possession of the mortgaged property and on sale being made, transfer the same to the purchaser—

334 He therefore prays your honorable court—

(First.) That, notwithstanding the possession of the receiver of this honorable court, you will authorize and permit your petitioner, as trustee as aforesaid under the said mortgage, to proceed and sell in accordance with the terms of said mortgage all and singular the railroad, properties, branches, and rolling-stock and franchises of said Shenango and Allegheny Railroad Company included in and covered by the said mortgage.

(Second.) That you will permit your petitioner to take possession of all and singular the mortgaged property on the day of the sale thereof under the said authority in the mortgage, and to transfer such possession to the purchaser thereof in accordance with the terms of the sale, and that you will order the receiver to transfer and deliver the said possession to your petitioner as aforesaid.

HENRY RAWLE, *Trustee.*

335 Personally before me came Henry Rawle, the petitioner above named, who, being duly sworn, says that the statements contained in the foregoing petition are true to the best of his knowledge, information, and belief.

HENRY RAWLE.

Sworn to and subscribed this 5th day of June, A. D. 1885.
Coram.

W. A. SCHMIDT, [SEAL.]
Notary Public.

336 UNITED STATES OF AMERICA, *State of Pennsylvania:*

Shenango and Allegheny Railroad Company, First-Mortgage Bond.

$500. No. 981. $500.

The Shenango and Allegheny Railroad Company acknowledge themselves indebted to Henry Rawle in the sum of five hundred dollars, lawful money of the United States, which sum they promise to pay to said Henry Rawle, or bearer, on the first day of April, 1889, with interest at the rate of seven per centum per annum, free of State tax, payable on the first days of October and April in each year on the presentation and delivery of the proper coupons, hereto annexed, at the National Bank of Commerce, in the city of New York. The holder hereof is secured by a mortgage bearing even date herewith of the whole line of their railroad, forty miles in length, made to Henry Rawle, trustee, which conveys all the estate, rights, liberties, and franchises of said company, including all locomotives, cars, and rolling-stock which may at any time be placed upon said road, being a first mortgage on said road and property to secure this and other bonds to be issued by said company not exceeding in all one million of dollars.

In witness whereof the said company have caused their corporate seal to be hereunto affixed, at Meadville, in the State of
337 Pennsylvania, and attested by their president and secretary, this first day of April, A. D. 1869.

[Seal Shenango & Allegheny Railroad Company.]

J. J. SHRYOCK, *Pres't.*
WM. THORP, *Secretary.*

I, Henry Rawle, do certify that the foregoing bond is one of the series of bonds above named and secured to be paid by the aforesaid mortgage, which I have caused to be duly recorded in all the counties through which said road passes.

HENRY RAWLE, *Trustee.*

Interest warrant, secured by first mortgage [on] Shenango and Allegheny Railroad Co., on bond No. 981, for seventeen $\frac{50}{100}$ dollars, payable at the National Bank of Commerce, in the city of New York, on the first day of April, 1889.

WM. THORP, *Secretary.*

338 In pursuance of a resolution of the stockholders and in accordance with a contract made with the Shenango and Allegheny Railroad Company the Mercer Mining and Manufacturing Company do hereby guarantee the payment of the interest and principal of the within bond.

[Seal Mercer Mining and Manufacturing Company.]

THOMAS H. WELLS, *Pres't.*
GILBERT McKIBBIN, *Clerk.*

339 UNITED STATES OF AMERICA, *State of Pennsylvania:*

Shenango and Allegheny Railroad Company First-Mortgage Bond.

$1,000. No. 555. $1,000.

The Shenango and Allegheny Railroad Company acknowledge themselves indebted to Henry Rawle in the sum of one thousand dollars, lawful money of the United States, which sum they promise to pay to said Henry Rawle, or bearer, on the first day of April, A. D. 1889, with interest at the rate of seven per cent. per annum, free of State tax, payable on the first days of October and April in each year on the presentation and delivery of the proper coupon, hereunto annexed, at the National Bank of Commerce, in the city of New York. The holder hereof is secured by a mortgage bearing even date herewith of the whole line of their railroad, forty miles in length, made to Henry Rawle, trustee, which conveys all the estate, rights, liberties, and franchises of said company, including all locomotives, cars, and rolling-stock which may at any time be placed upon said road, being a first mortgage on said road and property to secure this and other bonds to be issued by said company not exceeding in all one million of dollars.

340 In witness whereof the said company have caused their corporate seal to be hereunto affixed, at Meadville, in the State of Pennsylvania, and attested by their president and secretary, this first day of April, A. D. 1869.

JAMES J. SHRYOCK, *Pres't.*
WM. THORP, *Secretary.*

I, Henry Rawle, do certify that the foregoing bond is one of the series of bonds above named and secured to be paid by the aforesaid mortgage, which I have caused to be duly recorded in all the counties through which said road passes.

(Secured by first mortgage.)

(Coupon similar in form to one on $500 bond.)

341 *Mortgage. Shenango and Allegheny Railroad Company to Henry Rawle. Stamps, $1,000.00.)*

This indenture, made the first day of April, A. D. 1869, between The Shenango and Allegheny Railroad Company, of the first part, and Henry Rawle, of the city of Erie, Erie County, Pennsylvania, of the second part, witnesseth: That whereas the said party of the first part is a corporation duly formed, organized, and existing under and in pursuance of an act of the General Assembly of the Commonwealth of Pennsylvania, approved the 20th day of March, 1865, entitled "An act to incorporate the Bear Creek Railroad Company," and a supplement thereto entitled "A supplement to an act to incorporate the Bear Creek Railroad Company," approved the 20th day of March, 1865, changing the name of the same, regulating the rates of fare, and fixing the termini, approved the 9th day of April, 1867, for the purpose of constructing, completing, maintaining, and operating a railroad from the point of intersection or junction with the

Erie and Pittsburgh railroad in the township of West Salem,
342 in the county of Mercer, southeastwardly a distance of fifty-six miles to the mouth of Bear creek, in Butler county, Pa.; and whereas said Shenango and Allegheny Railroad Company have expended a large amount of money in grading and bridging the track of said railroad from said terminus in West Salem township to a point in Findley township, Mercer county, being a distance of twenty miles, and also purchasing and furnishing ties for said road, and in the payment of said work and ties has heretofore issued its coupon mortgage bonds to an amount not exceeding one hundred thousand dollars, secured by mortgage dated April 24th, 1867, to James J. Shryock, trustee, which bonds it is desirous of paying before maturity thereof; and whereas to enable said company to pay and cancel said bonds so issued, and also to pursue successfully said work, and also to procure iron rails, rolling-stock, and equipments for the portion of said road lying and being between the point of intersection and junction with the Erie and Pittsburgh railroad, in the township of West Salem, in the county of Mercer, a distance of twenty miles, to a point in Findley township, in said county, as well as for other purposes connected with said road, as far as the same is now partially constructed, and also for the purpose of constructing and building said railroad a further distance of twenty miles southeastwardly from said point in Findley township, and furnishing the same with iron rails, rolling-stock, and equipments, the said company need and have resolved to raise money to
343 an amount not exceeding one million dollars, being at the rate of twenty-five thousand dollars per mile, and for that purpose the said Shenango and Allegheny Railroad Company, party of the first part, by resolution of their board of directors, passed the — day of March, 1869, resolved as follows: "Whereas the indebtedness of this company amounts in the aggregate to about eighty thousand dollars, consisting of coupon bonds bearing date April 24, 1867, and this company is desirous of providing for the exchange or redemption of said bonds before or at their maturity, and also completing that portion of their road now partly constructed from the western terminus at its junction with the Erie and Pittsburgh railroad, for the distance of twenty miles southeastwardly to a point in Findley township, in Mercer county; and also constructing and completing their railroad for a further distance of twenty miles southeastwardly from said point in Findley township to a point in Butler county; and also equipping and stocking said railroad as soon as constructed and finished: Therefore Resolved, That for the purposes set forth and stated in the foregoing preamble, and in pursuance of authority vested by law in this company, the president and secretary be, and they are hereby, authorized and directed to execute coupon bonds at seven per centum, free of State tax, to an amount not to exceed in the aggregate the sum of one million of dollars upon that portion of the road now constructed and to be constructed between the western terminus
344 thereof, at its junction with the Erie and Pittsburgh railroad, in West Salem township, Mercer county, and a point in But-

ler county forty miles southeastwardly from said western terminus, and to be denominated the first-mortgage bonds, and to be dated the first day of April, 1869, and to become due on the first day of April, 1889, with interest thereon at the rate of seven per cent. per annum, free from State tax, payable semi-annually on the first days of October and April in each year at the National Bank of Commerce, in the city of New York, on presentation and surrender of the coupons attached thereto, the first of said coupons to be made due and payable on the first day of October, 1869, and the last of said coupons to be made due and payable with and at the maturity of the bond to which the said coupon is attached; and said bonds to be of the denomination of one thousand dollars and five hundred dollars, respectively, as directed by the board of directors of the company, and all of which said bonds shall be secured by a deed of trust or mortgage, to be executed and delivered to Henry Rawle, of the city of Erie, as trustee, in trust, and which deed of trust or mortgage shall convey the main line of the Shenango and Allegheny railroad, now partly constructed and to be hereafter constructed, between the western terminus thereof, in the county of Mercer, at its junction with the Erie and Pittsburgh railroad, and a point in Butler county on said railroad, forty miles southeastwardly from said western terminus, and all the appurtenances, equipments, rolling-stock, and things belonging to the company.

345 "Resolved, That five hundred thousand dollars of said bonds shall be set apart, kept, and used, and sold or exchanged in and for the redemption or exchange of the present outstanding bonds of the said company at or before their maturity; and for the payment of any present indebtedness of the said company, and be sold and used by the company at its option for the benefit of the road in completing and finishing and furnishing with the necessary rolling-stock and equipment the first twenty miles of said road from said western terminus, now graded and furnished with ties, which sum is equal to twenty-five thousand dollars per mile of that portion of said road now partly constructed and extending to a point in Findley township, Mercer county.

"Resolved, That the remaining five hundred thousand dollars of said coupon mortgage bonds, or so many thereof as may be required, shall be used in and for the construction, completing, and equipment of that portion of said road lying and being between said point in Findley township, the terminus of the first twenty miles, and a point in Butler county forty miles southeastwardly from the western terminus of said road, and to be used on the monthly estimates to be made and certified to by the chief engineer of the company, who shall be appointed for that purpose, and as fast as the work is done on said portion of the road, and no faster, and shall be furnished by the trustee upon the request and demand of the company expressed by resolution of a majority of their board
346 of directors, and shall be used for the construction, completion, and equipment of said road, as aforesaid, and for no other purpose."

And whereas, in pursuance of the foregoing resolutions, the said Shenango and Allegheny Railroad Company have caused to be executed bonds, with interest coupons attached, in the form following, to wit:

UNITED STATES OF AMERICA, *State of Pennsylvania:*

Shenango and Allegheny Railroad Company. First-Mortgage Bond.

$1,000. No. —. $1,000.

The Shenango and Allegheny Railroad Company acknowledge themselves indebted to Henry Rawle in the sum of one thousand dollars, lawful money of the United States, which sum they promise to pay to said Henry Rawle, or bearer, on the 1st day of April, A. D. 1889, with interest at the rate of seven per cent. per annum, free of State tax, payable on the first days of October and April in each year on presentation and delivery of the proper coupon, hereunto annexed, at the National Bank of Commerce, in the city of New York.

The holder hereof is secured by a mortgage bearing even date herewith of the line of their railroad, forty miles in length, made to Henry Rawle, trustee, which conveys all the estate, rights, liberties, and franchises of said company, including all locomotives, cars, and rolling-stock which may at any time be placed upon said
347 road, being a first mortgage on said road and property to secure this and other bonds to be issued by said company not exceeding in all one million of dollars.

In witness whereof the said company have caused their corporate seal to be hereunto affixed, at Meadville, in the State of Pennsylvania, and attested by their president and secretary, this first day of April, 1869.

—— ——, *Pres't.*
—— ——, *Secretary.*

I, Henry Rawle, do certify that the foregoing bond is one of the series of bonds above named and secured to be paid by the aforesaid mortgage, which I have caused to be duly recorded in all the counties through which said road passes.

—— ——, *Trustee.*

And also other bonds of like form and effect of the denomination of five hundred dollars.

Now, this indenture witnesseth: That in consideration of the premises and one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, issued and to be issued, as herein recited and provided, and every part of the said principal and interest as the same shall become payable according to the tenor of the said bonds and of the cou-
348 pons thereto annexed, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, convey and transfer, unto the said party of the second part all and singular the continuous railroad extending from its western termi-

nus, the junction with the Erie and Pittsburgh railroad, in the township of West Salem, county of Mercer and State of Pennsylvania, southeastwardly for a distance of forty miles to a point in the county of Butler, in said State, both partially constructed and partly unfinished and now in process of construction, or hereafter to be constructed and finished, between the points aforesaid, comprising the line of the said Shenango and Allegheny Railroad Company, including all the railways and rights of way, depot grounds and other lands owned or held by said company; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, water-tanks, and other buildings, and all machine-shops and other shops held or acquired for use in connection with said railroad or the business thereof; and including all locomotives, tenders, cars, and other rolling-stock or equipments, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railroad or any part thereof, or any of its equipments or appurtenances, whether now held or hereafter acquired; and any lateral or branch roads, with their appurtenances, that may hereafter be constructed by or come into the possession of the company along the line of the
349 aforementioned forty miles of main line or connected therewith, all of which things are hereby declared to be appurtenances and fixtures of the said railroad; and also all franchises connected with or relating to the said railroad, or the construction, maintenance, or use thereof, now held or hereafter acquired by the said party of the first part, and all corporate and other franchises which are now or may be hereafter possessed or exercised by the said party of the first part, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, tolls, income, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same, and any and every part thereof, with the appurtenances, unto the said party of the second part, and to his successor or successors in the trust hereby created and designated, and to his and their assigns, to the only proper use and behoof of the said party of the second part, his successors and assigns, — said company from selling, hypothecating, or otherwise disposing of any securities received by them in payment of stock or otherw[illegible], or any land or lands or other property of the company not necessary to be retained for their roadway, depot grounds, or stations, nor required for the construction or convenient use of their road, not from collecting moneys due the company upon stock sub-
350 scription or otherwise, provided they shall diligently proceed to collect and faithfully apply all such means to the finishing and equipping of their said road and other necessary purposes of said road, the same, nevertheless, to be held in trust for the purposes hereinafter expressed, to wit:

First. Until default shall be made in the payment of the prin-

cipal or interest of the said bonds or some of them, or until default shall be made in respect to something required to be done or kept by the Shenango and Allegheny Railroad Company, the said Shenango and Allegheny Railroad Company shall be suffered and permitted to possess, operate, manage, and enjoy the said railroad from said western terminus in West Salem township, Mercer county, to said point in Butler county, forty miles distant from said western terminus, including any branches, as aforesaid, with the equipments and appurtenances; and to take and use the rents, incomes, profits, tolls, and issues thereof in the same manner and with the same effect as if this deed of trust or mortgage had never been made.

Second. In case default shall be made in the payment of any interest on any of the aforesaid bonds, issued or to be issued, according to the tenor of the bonds and coupons thereto annexed or in any requirements to be done or kept by the Shenango and Allegheny Railroad Company, and if such default shall continue for the period of six months, it shall be lawful for the said trustee or his successor personally, or by his attorneys or agents, to enter in and upon
351 all and singular the premises hereby conveyed, or intended so to be, and each and every part thereof, and to have, hold, and use the same, operating by his superintendents, managers, receivers, and servants, or other attorneys or agents, the said railroad and conducting the business thereof and making from time to time all needful repairs and replacements, alterations, additions, and improvements thereto, and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same and every part thereof, and after deducting the expenses of operating the said railroad and conducting its business and all of the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien of these presents upon the said premises or any part thereof, as well as a just compensation for their own services, to apply the moneys arising as aforesaid to the payment of interest in the order in which such interest shall have become due or shall become due ratably to the persons holding the coupons evidencing the right to such interest, and after paying all interest which shall have become due to apply the same to the satisfaction of the principal of the aforesaid bonds of the original and substituted issues which may be at any time unpaid ratably and without discrimination or prejudice.

Third. In case default shall be made as aforesaid and shall continue as aforesaid it shall likewise be lawful for said trustee,
352 or his successor, after entry as aforesaid, or other entry, or without entry, personally or by his attorneys or agents, to sell, or, upon the written request of at least the holders of one-half of the bonds then unpaid, said trustee shall sell and dispose of all and singular the premises hereby conveyed, or intended so to be, or so much as shall be necessary to pay and discharge the principal and interest of all such bonds as may then be due and unpaid, at public auction in the city of New York or at the city of Meadville, in the State of Pennsylvania, or at such other place within the State in which said railroad is situated which the said trustee may designate

and at such time as he may appoint, having first given notice of the time and place of such sale by advertisement published not less than three times a week for ninety days in one or more newspapers in the cities of New York, Philadelphia, Erie, and Meadville, and to adjourn the said sale from time to time in his discretion, and if so adjourned to make the same at the time and place to which the same may be adjourned, and to make and deliver to the purchasers thereof good and sufficient deed or deeds in the law for the same in fee-simple, which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the party of the first part and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through, or under them, or any of them, or either of them, and after deducting from the proceeds of such sale just allowances for all expenses of said sale, including attorney's and counsel fees and all other expenses, advances,
353 or liabilities which may have been made or incurred by the said trustee in operating or maintaining the said railroad or in managing its business while in possession, and all payments which may have been made by him for taxes or assessments, and for charges and liens prior to the lien of these presents on the said premises, or any part thereof, as well as compensation for his own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds of the original issue and of the subsequent issue as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid without discrimination or prejudice, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest; and if, after the satisfaction thereof, a surplus of the said proceeds shall remain to pay over the same to the said Shenango and Allegheny Railroad Company, or to such other parties as may be entitled to receive the same. And it is hereby declared that the receipt or receipts of the said trustee shall be a sufficient discharge to the purchaser or purchasers of the premises for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof, or having such a receipt, be liable to see to its being applied upon or for the trusts and purposes of these presents, nor in any manner howsoever
354 be answerable for any loss in application or non-application of such purchase-money, or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

Fourth. The said Shenango and Allegheny Railroad Company shall from time to time, and at all times hereafter, and as often as thereunto requested by the trustee, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in the law for the better assuring unto the trustee and his successors in the trust hereby created — upon the trusts herein expressed, the railroad appurtenances, equipments, and rolling-stock hereinbefore mentioned, or intended so to be, and all other property and things whatsoever which may be hereafter required for use in connection with

the same, or any part thereof, and all franchises now held or hereafter acquired, including the franchise to be a corporation, as by the trustee or his successor or by his counsel learned in the law shall be reasonably advised, devised, or required.

Fifth. If the said Shenango and Allegheny Railroad Company shall well and truly pay the sum of money herein required to be paid by the said company and all interest thereon at the times and in the manner herein specified, and shall well and truly keep and perform all things herein required to be kept and performed by the said company according to the true intent and meaning of these presents, then and in that case the estate, right, title,
355 and interest of the said party of the second part, and of his successor or successors in the trust hereby created, shall cease and determine and become void; otherwise the same shall be and remain in full force and virtue.

Sixth. It is hereby declared and agreed that it shall be the duty and right of the trustee to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take appropriate legal proceedings to enforce the rights of the bondholders under these presents, only upon the requisition, in writing, as hereinafter specified, as applicable to the several cases of default in the manner and subject to the qualifications hereinafter provided, as follows, to wit:

(1st.) If default shall be as to interest or to principal of any bonds, either of the original or of any substituted issue, provided for by these presents, such requisition upon the said trustee shall be by holders of not less than three hundred thousand dollars in the aggregate amount of the said bonds, and upon such requisition and proper indemnification by the persons making the same to the trustee against cost and expense to be by them incurred, it shall be the duty of the trustee to enforce the rights of the bondholders under these presents by entry, sale, or legal proceedings, as he, being advised by counsel learned in the law, shall deem most expedient for the interest of all the holders of said bonds.

(2nd.) If default be made in respect to any other provision herein contained to be performed or kept by the said company, then
356 and in either of such cases the requisition shall be as aforesaid; but it shall be within the discretion of the trustee to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of said bonds, by requisition, in writing, to instruct the said trustee to waive such default, or to enforce their rights by reason thereof, provided that no action of the said trustee or bondholders, or both, in waiving such default, or otherwise, shall extend to or be taken to effect any subsequent default, or to impair the rights resulting therefrom.

Seventh. It is mutually agreed by and between the parties hereto that the said trustee shall be entitled to just compensation for all services which he may hereafter render in his trust, to be paid by the company.

In witness whereof the party of the first part has caused its cor-

porate seal to be affixed to these presents and the same to be attested by the signatures of the president and secretary, and the said party of the second part has hereunto set his hand and seal to testify the acceptance of the said second party of the said trust the day and year first above written.

[Seal Shenango and Allegheny Railroad Company.]

THE SHENANGO AND ALLEGHENY RAILROAD COMPANY,
By J. J. SHRYOCK, *President.*

Attest: WM. THORP, *Sec'y.*

357 STATE OF PENNSYLVANIA, *County of Crawford:*

Be it remembered that on the 6th day of April, 1869, before me, Wm. Davis, Jr., *and* associate judge of the court of common pleas in and for said county and State, personally appeared James J. Shryock, president of the above-named corporation, and, being duly sworn, deposeth and saith that he was personally present at the execution of the above-written indenture or mortgage, and saw the common seal of the said corporation of "The Shenango and Allegheny Railroad Company" duly affixed thereto, and that the seal so affixed thereto is the common corporate seal of the said "The Shenango and Allegheny Railroad Company," and that the above-written indenture or mortgage was duly signed, sealed, and delivered by and as for the act and deed of the said "The Shenango and Allegheny Railroad Company" for the uses and purposes therein mentioned, and that the name of this deponent subscribed to the said indenture or mortgage as president of the said corporation, in attestation of the due execution and delivery of the said deed, is of this deponent's own proper and respective handwriting.

J. J. SHRYOCK

Sworn and subscribed the day and year aforesaid before me. Witness my hand and seal.

WM. DAVIS, JR., *A. J.* [SEAL.]

358 I, Henry Rawle, of the city of Erie, State of Pennsylvania, do hereby accept the trust conveyed to me in the foregoing deed, and agree to discharge the same, as by said deed required and empowered.

Witness my hand and seal this first day of April, A. D. 1869.

HENRY RAWLE [SEAL.]

Witness:
THOMAS M. HEMPHILL.

Recorded April 17th, 1869.

359 To Henry Rawle, Esq., trustee:

Whereas the Shenango and Allegheny Railroad Company, a corporation of the State of Pennsylvania, by its mortgage or deed of trust, duly authorized, bearing date April 1st, 1869, and duly

executed under the common corporate seal of said company, and now of record in the recorder's office of Mercer county, Pennsylvania, in mortgage book "C," pages 456, &c., and in the recorder's office of Butler county, Pennsylvania, in mortgage book No. 3, vol. 1, pages 58, &c., conveyed and mortgaged to you in trust its properties for the purpose of securing the payment of certain bonds of said railroad company aggregating one million dollars, and the interest thereon, evidenced by warrants or coupons thereto attached; and,

Whereas, among other things, in and by said mortgage it was provided that if default be made for the period of six months in the payment of any interest according to the tenor of the bonds and the coupons thereto annexed *that* then, on the written request of more than one-half of the holders of the then unpaid bonds, it shall *then* be the duty of the trustee to proceed, and with or without entry, to sell all the mortgaged property; and

Whereas default has already been made in the payment of interest on said bonds, evidenced by its coupons thereto annexed, and said default has continued for the period of more
360 than six months, and no interest whatever has been paid on any of said bonds for the instalment due October 1st, 1884, though proper and timely demand for said payment was made:

Now, we, the undersigned, being the holders of more than five hundred thousand ($500,000) dollars of said bonds, being more than half of all of said bonds, and being also the owners of more than one-half of all said interest coupons or warrants, do hereby, in writing, request and demand of you that, in accordance with the terms of said mortgage, and with or without entry, you immediately proceed to sell, under the power of sale therein given you, all the properties of said railroad company included in said mortgage, and we do hereby agree to indemnify you against the cost and expense to be by you incurred in complying with this request.

May 12th, 1885.

F. W. Huidekoper, Exc. E. H.	$15,000
F. W. Huidekoper, for self & others	50,000
Carey & Whitridge, as att'ys	86,500
Chas. M. Reed	93,000
Erie & Pittsburgh R. R. Co., by F. F. Munhall, att'y	15,000
P. Metcalf	15,000
G. F. Brevillier	6,000

361 STATE OF PENNA., } ss:
County of Crawford, }

Personally before me came H. C. Huidekoper, of Meadville, Penna., who, being by me duly sworn, says that he was concerned in the preparation and procuration of the signatures to the foregoing petition or written request; that each one of the persons whose names are signed to this petition are the *bona fide* holders for value of the number of 1st-mortgage bonds of the Shenango & Allegheny Railroad Co. set opposite their respective names, and also of all the cou-

pons belonging to said bonds which matured on October 1st, 1884, and on April 1st, 1885, and that the averments set forth in said petition are true.

H. C. HUIDEKOPER.

Sworn & subscribed before me this 26th day of May, A. D. 1885.

362 To Henry Rawle, Esq., trustee:

Whereas the Shenango and Allegheny Railroad Company, a corporation of the State of Pennsylvania, by its mortgage or deed of trust, duly authorized, bearing date April 1st, 1869, and duly executed under the common corporate seal of said company, and now of record in the recorder's office of Mercer county, Pennsylvania, in mortgage book "C," pages 456, &c., and in the recorder's office of Butler county, Pennsylvania, in mortgage book No. 3, vol. 1, pages 58, &c., conveyed and mortgaged to you in trust its properties for the purpose of securing the payment of certain bonds of said railroad company aggregating one million dollars, and the interest thereon, evidenced by warrants or coupons thereto attached; and

Whereas, among other things, in and by said mortgage it was provided that if default be made for the period of six months in the payment of any interest according to the tenor of the bonds and the coupons thereto annexed *that* then, on the written request of more than one-half of the holders of the then unpaid bonds, it shall *then* be the duty of the trustee to proceed, and with or without entry, to sell all the mortgaged property; and

Whereas default has already been made in the payment of interest on said bonds, evidenced by its coupons thereto annexed, and said default has continued for the period of more than six

363 months, and no interest whatever has been paid on any of said bonds for the instalment due October 1st, 1884, though proper and timely demand for said payment was made;

Now, we, the undersigned, being the holders of more than five hundred thousand ($500,000) dollars of said bonds, being more than half of all of said bonds, and being also the owners of more than one-half of all said interest coupons or warrants, do hereby, in writing, request and demand of you that, in accordance with the terms of said mortgage, and with or without entry, you immediately proceed to sell, under the power of sale therein given you, all the properties of said railroad company included in said mortgage, and we do hereby agree to indemnify you against the cost and expense to be by you incurred in complying with this request.

May 12th, 1885.

A. D. Gillespie, Greenville, Pa.	$17,000
William Reynolds	12,000
J. D. Gill	14,000
Sturgis T. Dick	6,500
James T. Shryock	17,000
T. H. Delamater	1,000
Cyrus Kitchen	4,000

Adelaide L. Cullum			10,000
Harriet S. Cullum			1,000
U. G. Sargeant			4,500
A. McL. White			4,500
364 R. Craighead			7,000
A. Huidekoper			60,000
A. C. Huidekoper, Meadville			12,500
E. G. Huidekoper			5,000
Edgar Huidekoper, treas. Mead. Theol. School			15,000
Lewis Walker, Meadville			5,000
Lewis Walker, att'y, Meadville			102,000
Thomas Nesbit	Samuel B. Dick, att'y		12,000
S. O. Stephenson			3,000
Mary A. Crain			1,000
John G. Dunn			1,000
Mary B. Cook			2,000
H. H. Thompson			3,000
John V. Reynolds			6,500
James G. Carnachan			1,000
A. S. Cullum, by G. S. Cullum, att'y			2,500

STATE OF PENNSYLVANIA, }
County of Crawford, } ss:

Personally before me came A. C. Huidekoper, of Meadville, Pennsylvania, who, being by me duly sworn, says that he was concerned in the preparation and procuration of the signatures to the foregoing petition or written request; that each one of the persons whose names are signed to this petition are the *bona fide* holders for value of the number of the 1st-mortgage bonds of the Shenango and Alle-
365 gheny Railroad Co. set opposite their respective names, and also of all the coupons belonging to said bonds, which matured on October 1st, 1884, and April 1st, 1885, and that the amounts set forth in said petition are true.

A. C. HUIDEKOPER.

Sworn and subscribed before me this 26 day of May, A. D. 1885.

J. FORD DORRANCE,
Notary Public.

366 To Henry Rawle, Esq., trustee:

Whereas The Shenango and Allegheny Railroad Company, a corporation of the State of Pennsylvania, by its mortgage or deed of trust duly authorized, bearing date April 1st, 1869, and duly executed under the common corporate seal of said company, and now of record in the recorder's office of Mercer county, Pennsylvania, in mortgage book "C," pages 456, &c., and in the recorder's office of Butler county, Pennsylvania, in mortgage book No. 3, vol. 1, pages 58, &c., conveyed and mortgaged to you in trust its properties for the purpose of securing the payment of certain bonds of said railroad company aggregating one million dollars, and the interest thereon, evidenced by warrants or coupons thereto attached; and

Whereas, among other things, in and by said mortgage it was provided that if default be made for the period of six months in the payment of any interest according to the terror of the bonds and the coupons thereto annexed *that* then, on the written request of more than one-half of the holders of the then unpaid bonds, it shall then be the duty of the trustee to proceed, and with or without entry, to sell all the mortgaged property; and

Whereas default has already been made in the payment of interest on said bonds evidenced by its coupons thereto annexed; and said default has continued for the period of more than
367 six months, and no interest whatever has been paid on any of said bonds for the instalment due October 1st, 1884, though proper and timely demand for said payment was made:

Now, we, the undersigned, being the holders of more than five hundred thousand ($500,000) dollars of said bonds, being more than half of all of said bonds, and being also the owners of more than one-half of all said interest coupons or warrants, do hereby, in writing, request and demand of you that, in accordance with the terms of said mortgage and with or without entry, you immediately proceed to sell, under the power of sale therein given you, all the properties of said railroad company included in said mortgage, and we do hereby agree to indemnify you against the cost and expense to be by you incurred in complying with this request.

May 12th, 1885.

THE FIDELITY INSURANCE, TRUST, AND SAFE DEPOSIT CO.,
Trustee for Alice R. Geyelin,
By JOHN B. GEST, *V.-Pres'd* ($12,000).
THE FIDELITY INSURANCE, TRUST, AND SAFE DEPOSIT CO.,
Guardian of Estate of Marion I. Raitle,
By JOHN B. GEST, *Vice-Pres'd't* ($11,000).

368 And now, June 6th, 1885, the foregoing petition and exhibits being presented in open court, the court do, upon consideration thereof, order the same to be filed, and do fix Monday, the 22nd day of June, A. D. 1885, at 11 o'clock a. m., for the hearing of the same, and do order a copy of the said petition and of this order (but not of the exhibit) to be served upon Wayne McVeagh, Esqr., the att'y for the plaintiffs in this case; upon the president of the Shenango and Allegheny Railroad Company; upon Messrs. Dunning, Edsall and Hart, attorneys for J. H. Devereux, trustee on the second mortgage, and upon Thomas P. Fowler, Esqr, the present receiver, and upon Davies, Rapallo and Cole, counsel for the Bristol & South Wales Railway Wagon Co., and other intervenors.

By the court:

369 *Petition of Henry Rawle, Trustee, for Leave to Sell Under Power in Mortgage, &c.*

May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Filed June 6, 1885.

FRANCIS RAWLE,
Phila., D. T. W.

370 YOUNG, &c.,
vs.
THE SHENANGO & ALLEGHENY R. R. CO.

In the Matter of the Petition of HENRY RAWLE for leave to sell the She. & All. R. R. under the power in the mortgage to him as trustee.

Per *curiam:*

The railroad touching which this application is made is in the charge and custody of a receiver appointed by this court, and the petitioner now asks the permission of this court to "proceed and sell in accordance with the terms" of a mortgage executed to him by said railroad company, and dated April 1, 1869, "all and singular the railroad, properties, branches, and rolling-stock and franchises of said Shenango and Allegheny Railroad Company included in and covered by the said mortgage," and he further asks that the receiver be ordered to transfer to him the possession of the mortgaged property that he may turn over the same to the purchaser at the sale to be made by him.

In the absence of controlling equitable considerations, the court would not withhold its consent to the employment of a legal
371 remedy by a condition, or to his exercise of a clear legal right.

But it is alleged by holders of bonds under a subsequent mortgage through their trustee and other creditors—

1st. That the mortgage in question binds only fifty miles of the main line of the railroad by express limitation in the mortgage, and does not bind any of its branches because they were not constructed at the date of the mortgage, and no authority was given to construct them until afterwards; hence that a sale of the main line of the road and its branches until the scope of the mortgage is authoritatively ascertained and defined would operate injuriously upon the rights and interests of the other creditors of the company.

2. That a large amount of the first-mortage bonds represented by the petitioner have been extinguished by payment or are invalid in the hands of their present holders, and that, therefore, until the amount of that mortgage is liquidated and the extent of the indebtedness secured by it is determined, the holders of subsequent securities cannot intelligently protect their interests at the sale; and

3. That certificates of indebtedness have been issued by the receiver under the authority of the court for the payment of expenses and charges necessarily incurred by him in the administration of the property in his custody and which it is the duty of the court to protect.

The court is satisfied that a fragmentary sale of the main line with a disputable right to sell the branches therewith
372 would affect injuriously the interests of the first-mortgage bondholders (one of whom owning a large amount of that class of securities is here objecting to the sale proposed) as well as the interests of the other creditors, and the prayers of the petition cannot therefore be granted in their present form and at the present time.

An early sale of the railroad as an entirety would undoubtedly conduce to the benefit of all its creditors, and a bill is now pending in this court, filed by the trustee in the second mortgage, praying for a foreclosure of that mortgage. *By* proper amendments of that bill and a vigorous prosecution of it to a final hearing and a conjoining sale of all the property of the company under both mortgages will remove all objections to a sale.

The court, therefore, will not dismiss the petition, but will retain it for a reasonable time to bring the pending suit to a conclusion, and thus *to* enable the court to make a decree and orders as will best subserve, in its judgment, the interests of all parties.

373 *Opinion Denying for the Present the Prayers of Petitioner.*

May Term, 1884.

YOUNG & TYLER
vs.
SHENANGO AND ALLEGHENY R. R. Co. } No. 17.

In re Petition of HENRY RAWLE, Trustee, &c.

Filed July 31, 1885.

H. D. GAMBLE, *Cl'k.*

374 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY W. TYLER and CHARLES L. YOUNG
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY.

To the judges of said court:

The petition of the "Bristol and South Wales Railway Wagon Company, Limited," of Bristol, England, a corporation organized under the laws of Great Britain, the "Union Rolling Stock Company, Limited," of Birmingham, England, a corporation organized under the laws of Great Britain, and William A. Adams, of Gaines, in the county of Hereford, England, respectfully shows to your honors that your petitioners made three several contracts with the She-

nango and Allegheny R. R. Co.—No. 1, dated August 1st, 1880, for fifty-six (56) gondola coal cars, and No. 3, dated January 20th, 1882, for fifty (50) gondola coal cars—whereby they leased to the said railroad company one hundred and fifty-six (156) gondola coal cars, by agreement of lease, ordinarily called a car-trust.

375 That by the terms of said contract of lease No. 1 the said railroad company undertook and agreed to pay, upon the delivery of the cars therein mentioned, the sum of forty ($40) dollars for each of them upon the first day of September, 1880, and a subsequent monthly rental of seven dollars and sixty-five cents ($7.65) upon each and every car for sixty (60) succeeding months. By the terms of said contract of lease No. 2 the said railroad company undertook and agreed to pay, upon the delivery of the cars therein mentioned, the sum of forty ($40) dollars for each of them, upon the first day of September, 1881, and a subsequent monthly rental of seven dollars and sixty-five cents ($7.65) for each and every car for (60) succeeding months. By the terms of said contract of lease No. 3 the said railroad company undertook and agreed to pay, upon the delivery of the cars therein mentioned, the sum of forty-five dollars ($45) for each of them upon the first day of March, 1882, and a subsequent monthly rental of eight dollars and sixty-one cents ($8.61) for each and every car for sixty (60) succeeding months; and that your petitioners, in compliance with said agreement of lease, delivered the said rolling-stock to the said railroad company, and that the said railroad company paid the first payments of $40, $40, & $45, respectively, as required by the several contracts, and paid the regular monthly rentals up to and including the rentals due the first day of March, 1883, after which date no rentals were paid until the one due the first day of June, 1884, when, on July 29th, one

376 monthly rental, according to each of the three contracts, was paid, but that since the rental due the first day of June, 1884, no rent has been paid for the use of said cars, or otherwise.

That, nevertheless, said cars have been and are in the possession of the said railroad company, and are constantly employed by it in its business, and are wearing out in the use of the said railroad company, without any compensation to the owners thereof.

And your petitioners further show that Henry W. Tyler and Charles L. Young have filed their bill in the circuit court of the United States for the western district of Pennsylvania, on a motion for the appointment of a receiver of the Shenango & Allegheny Railroad Company and to procure a foreclosure of the said railroad company, and that under the said proceedings Thomas Powell Fowler, Esq., was, on the 15th day of March, 1884, by decree of this court, appointed receiver of all the property, real and personal, of the Shenango & Allegheny Railroad Company, as by the said decree reference to which is hereby made, will more fully appear.

That your petitioners are informed by the said receiver that the said rolling-stock is necessary for the proper operation of the said railroad, but that, nevertheless, with the exception of the rental for one month upon each of the three contracts, amounting in the aggregate to the sum of $1,241.40, rentals paid on or about the 29th day

of July, 1884, and $16.54 interest on the sum paid on the 10th day of October, 1884, and the further sum of $625 paid on or
377 about the 12th day of November, 1884, the said receiver has never paid any rent or other compensation for the use of the said rolling-stock, but has continued to use it without any compensation whatever, and that there is now due upon the said contracts, after deducting the payments above mentioned, the sum of $30,393.46 together with interest at 10 per cent.

That in order that the rights of your petitioners may be duly protected under the proceedings begun by Henry W. Tyler and Charles L. Young against the Shenango & Allegheny Railroad Company, as above set forth, your petitioners believe it is necessary that they should be allowed to appear therein.

Wherefore your petitioners pray that they may be made parties defendant in the above-entitled action, with leave to make such application to this court in this action from time to time as parties in said suit as they may be advised.

And your petitioners will ever pray, &c.

UNITED STATES OF AMERICA, *Southern District of New York:*

On this 15th day of May, 1885, before me personally appeared Oliver Adams, who, being by me first duly sworn, did depose and say that he is the agent of the petitioners named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge,
378 except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; and that the reason why this verification is not made by the petitioners herein is that the petitioners reside in England, in the Kingdom of Great Britain; and that deponent resides in the city, county, and State of New York, and that all the material allegations of said petition are within the personal knowledge of the deponent.

OLIVER ADAMS.

Sworn to before me this 15th day of May, 1885.

HOWARD TOWNSEND,
Notary Public, New York County, N. Y.

379 Notice of the application of the Bristol & South Wales Railway Wagon Company, the Union Rolling Stock Company, and William Adams for leave to intervene in the within-entitled suit is hereby admitted.

May 22, 1885.

WAYNE MacVEAGH,
Att'y for Pl'ffs.

380 *Petition.*

U. S. Circuit Court, Western Dist. Penna. May T., 1884.

HENRY W. TYLER and Another
against
THE SHENANGO & ALLEGHENY RAILROAD COMPANY. } No. 17.

Davies, Cole & Rapallo, attorneys for petitioners.

I hereby consent to the entry of an order granting the prayer of the within petition permitting the Bristol & South Wales Railway Wagon Company, Limited, & others to intervene without prejudice to any rights involved.

May 20, 1885.

WAYNE MACVEAGH,
Att'y for Receivers.

381 In the Circuit Court of the United States for the W. D. of Penna. May Term, 1884. In Equity.

CHARLES L. YOUNG and HENRY W. TYLER, Citizens of Great Britain,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* } No. 17.

To the hon. the judges of the said court:

The petition of James J. Shryock, of Meadville, in the State of Pennsylvania, respectfully shows—

That a bill in equity by the above-named plaintiffs was, on March 15th, 1884, filed in this hon. court against the above-named defendant, praying, amongst other things, for the appointment of a receiver, under which, on said date, this hon. court appointed Thomas Powell Fowler, Esq., receiver, who accepted the trust, took possession of the railroad and all its property, and has ever since continued in possession of the same.

Your petitioner, prior to the filing of said bill was, and at the time when it was filed, and ever since has continued to be, a cred-
382 itor of the said Shenango and Allegheny Railroad Co. in a sum exceeding seventeen thousand dollars, being evidenced by the bonds of said company under its corporate seal and secured by a first mortgage on the property of said railroad company; that there is long overdue and unpaid on said bonds two installments of interest, due, respectively, on October first, A. D. 1884, and April first, A. D. 1885, amounting in the aggregate to the sum of seven hundred and ninety dollars; that no portion of the income of said railroad has been appropriated by the receiver to the payment of said interest, though he has expended large sums in the payment of other obligations of the company which, as your petitioner verily believes, should have been appropriated to the payment of said interest; that in various ways the indebtedness of said company has been increased to the detriment of your petitioners' rights; that as a creditor of said company by reason of the said bonds and irre-

spective of the security of the same by reason of the mortgage, your petitioner is interested in the subject-matter of the controversy, and desires to be made a party defendant in this case so that he may take such steps in the said cause and as to the several matters and things now pending before the different masters appointed by this hon. court as he may be advised is proper in the premises.

He therefore respectfully prays your hon. court that he may be permitted to intervene as a party defendant *pro inter esse suo* in the above-entitled cause, and that he have such other relief as to
383 equity and justice may appertain and to your honors may seem meet.

And he will ever pray.

JAS. J. SHRYOCK.

Personally before me came James J. Shryock, the petitioner above named, who, being by me duly sworn, says that the statements contained in the foregoing petition are correct and true, as he verily believes.

JAS. J. SHRYOCK.

Sworn to and subscribed this June 8th, A. D. 1885.

Coram.

[SEAL.] GEO. W. ADAMS,
Notary Public.

384 *Petition of James J. Shryock for Leave to Intervene.*

May Term, 1884.

CHARLES L. YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY R. R. CO. *et al.* } No. 17.

And now, June 9th, 1885, the within petition presented as ordered to be filed, and the same is set for hearing on Monday, June 22d, 1885, at eleven o'clock a. m., notice thereof to be given to attorneys for pl'tff and upon def't, — upon attorneys for intervening creditors.

By the court:

Filed June 9, 1885.

FRANCIS RAWLE, *D. T. H.*

385 In the Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

To the honorable the judges of said court:

The petition of the Second National Bank of Erie, Pennsylvania, would respectfully represent—

390 *Petition of Second National Bank of Erie, Pa., to be Made a Party Defendant pro inter esse suo.*

May Term, 1884.

CHARLES L. YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

And now, July 3rd, 1885, the within petition presented and ordered to be filed, and the same is set for hearing on Monday, July 13th, 1885, at 10 a. m., notice to be given to the attorneys for plaintiffs and the attorneys for the Shenango and Allegheny R. R. Co.

By the court:

J. B. BRAWLEY,
Att'y for Petitioner.

391 In the Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

To the honorable the judges of said court:

Your petitioner, The First National Bank of Cleveland, Ohio, a corporation organized and acting under the laws of the United States of America and a resident and citizen of the State of Ohio, respectfully represents—

That the plaintiffs, in their bill of complaint filed in the above-entitled cause against the defendant, among other things, pray—

"I. That the property of the company defendant shall be administered and applied in the manner and for the purpose to which it ought, under the circumstances, to be applied, and so that the same may be justly and equitably applied toward the payment of its debts.

"II. That a proper person be appointed to take possession, control, and care of the property of the corporation defendant which may be within the jurisdiction of this court."

392 That under and in pursuance of said bill and prayer this honorable court appointed Thomas P. Fowler, Esq., receiver of said railroad company, its property and franchises, who accepted the trust and took possession of the said railroad property and franchises, and has ever since continued, and now is, in possession thereof.

Your petitioner further represents that the said defendant, The Shenango and Allegheny Railroad Company, is indebted to this petitioner in the sum of thirty thousand dollars; that such indebtedness is evidenced by two promissory notes, to wit, one dated February 23rd, 1884, payable 60 days after date to the order of the Mercer Mining and Manufacturing Company, for the sum of twenty-five

thousand dollars, and one dated February 19th, 1884, payable 60 days after date to the order of the Mercer Mining and Manufacturing Company, for the sum of five thousand dollars.

That each and both of said promissory notes were for value received, and before due discounted by this petitioner, who is now the owner and holder thereof, and said notes are both due and unpaid in whole and in part to this petitioner from the said defendant.

That as and for collateral security for the notes aforesaid your petitioner holds sixty-four bonds of one thousand dollars each of the second issue of first-mortgage bonds (so called) of the said defendant.

That said defendant company has executed two mortgages,
393 called, respectively, the "first" and "second" mortgages, upon the property thereof.

The said first mortgage is of date April 1st, 1869, and was made payable to Henry Rawle as trustee to secure the payment of the bonds of said company to the aggregate amount of one million dollars, with coupons or interest warrants thereto attached for the payment of semi-annual interest, at the rate of seven per cent. per annum.

The second mortgage is of date July 2d, 1877, and was made payable to J. H. Devereux, of Cleveland, Ohio, to secure the payment of a like amount of bonds of said company, viz., one million dollars, and under which, this petitioner is informed, bonds to the amount of about four hundred thousand dollars have been issued.

That a controversy has arisen between the first and second mortgage bond creditors of said company as to the extent of the lien of the said first mortgages.

That the trustee and bondholders under the said second mortgage claim that the said first mortgage covers only that portion of said road extending from the junction of the Shenango and Allegheny railroad with the Erie and Pittsburgh railroad in West Salem township, Mercer county, Pennsylvania, southwardly for a distance of forty miles to a point in the county of Butler.

That this petitioner is advised by counsel learned in the law and believes that the said trustee and bondholders under
394 the said second mortgage are right in their controversy aforesaid, and that said first mortgage is a lien upon the property of said company only to the extent claimed by them as aforesaid.

That it is true and is admitted by all the parties in interest that said second mortgage is a lien upon the entire length of the line of the defendant company's road, with all its property and franchises of every nature and kind.

Your petitioner is further informed, believes, and expects to be able to prove that a large amount of the first-mortgage bonds of the said defendant company are justly and equitably paid, which several questions, *inter alia*, your petitioner is advised by counsel and believes will necessarily become subject-matters of controversy in this suit.

That, as a creditor of said defendant company and a holder of its second-mortgage bonds, your petitioner is interested in the various questions and subject-matters of controversy which will arise in this

suit, and desires to be made a party defendant therein, so that the petitioner may take such steps in said cause, and as to the several matters now pending before the several masters appointed by this honorable court, as your petitioner may be advised are proper in the premises.

This petitioner therefore prays this honorable court to permit the petitioner to intervene and be made a party defendant *pro inter esse suo* in the above-entitled cause, and to have such other and
395 further relief in the premises as may be just and equitable.

And your petitioner will ever pray, &c.

THE FIRST NATIONAL BANK
OF CLEVELAND,
By A. W. J. NEWBERRY AND
J. B. BRAWLEY,
Its Solicitors.

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

Henry S. Whittlesey, being duly sworn, says that he is the cashier of the First National Bank of Cleveland, Ohio, above named; that he has read the foregoing petition, and that the facts therein stated are just, true, and correct, according to the best of his knowledge and belief.

H. S. WHITTLESEY, *Cashier.*

Sworn to and subscribed before me this 1st day of July, A. D. 1885.

WALTER A. BIDDLE,
Notary Public.

396 *Petition of First National Bank of Cleveland, Ohio, for to be Made a Party Defendant pro inter esse suo.*

May Term, 1884.

CHARLES L. YOUNG *et al.* }
vs. } No. 17.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. }

And now, July 3rd, 1885, the within petition presented and ordered to be filed, and the same is set for hearing on Monday, July 13th, 1885, at 10 a. m., notice to be given to the attorney for plaintiffs and the attorney for the Shenango & Allegheny R. R. Co.

By the court:

A. W. J. NEWBERRY,
J. B. BRAWLEY,
Solicitors for Petitioner.

397 In the Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER
vs. } No. 17.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY.

To the honorable the judges of said court:

The petition of the First National Bank of Greenville, Pa., would respectfully represent that the plaintiffs in their bill of complaint filed in the above-entitled case against the defendant, among other things, pray:

"I. That the property of the company defendant shall be administered and applied in the manner and for the purpose to which it ought, under the circumstances, to be applied, and so that that the same may be justly and equitably applied toward the payment of its debts.

"II. That a proper person be appointed to take possession, control, and care of the property of the corporation defendant which may be within the jurisdiction of this court."

That under and in pursuance of the bill and the prayer
398 this honorable court appointed Thomas Fowler, Esq., receiver of said railroad company, its property and franchises, who accepted the trust and took possession of the said railroad and its property and franchises, and has ever since continued, and is now, in possession thereof.

Your petitioner would further represent that the said defendant is indebted or liable to the petitioner in the sum of twenty thousand dollars, evidenced by the promissory note of the defendant company for ten thousand dollars, dated February 14th, 1884, payable thirty days after date, and by a note of the Mercer Mining and Manufacturing Company for ten thousand dollars, dated January 10, 1884, payable in sixty days after date, and indorsed by the Shenango and Allegheny Railroad Company, on which the said Shenango and Allegheny Railroad Company is now liable to the petitioner for the amount of ten thousand dollars and upwards.

That the entire amount of twenty thousand dollars and upwards is now due and payable to your petitioner from the said Shenango and Allegheny Railroad Company, and for which the petitioner holds as collateral seventeen thousand dollars of second mortgage bonds and five thousand two hundred dollars of unpaid coupons or interest warrants of first mortgage bonds of the said company.

That said defendant company has executed two mortgages, called the first and second mortgages, upon the property of said Shenango and Allegheny Railroad Company.

399 The first mortgage is dated April 1st, 1869, and was made payable to Henry Rawle as trustee to secure the payment of the *of the* bonds of said company to the aggregate amount of one million dollars, with coupons or interest warrants thereto attached for the payment of semi-annual interest, at the rate of seven per cent. per annum.

The second mortgage is dated July 2nd, 1877, and was made payable to J. H. Devereux, of Cleveland, Ohio, to secure the payment of a like amount of bonds of said company, viz., one million dollars, and under which, the petitioner is informed, bonds to the amount of two hundred thousand dollars have been issued.

That a controversy has arisen between the first and second mortgage creditors of said company as to the extent of the lien of the first mortgage.

That the trustee and bondholders under the second mortgage claim that the said first mortgage covers only that portion of said road extending from the junction of the Shenango and Allegheny railroad with the Erie and Pittsburgh railroad at Shenango, in West Salem township, Mercer county, Pennsylvania, southwardly for a distance of forty miles to a point in the county of Butler.

That the petitioner is advised by counsel learned in the law that the trustee and bondholders under the second mortgage are
400 right in their controversy, and that the said first mortgage is a lien only to the extent claimed by said trustee and bondholders under said second mortgage.

That it is true and is admitted that the said second mortgage is a lien upon the entire length of the line of the defendant company's road, with all its property and franchises of every nature and kind.

Your petitioner is further informed, believes, and expects to be able to prove that a large amount of the first-mortgage bonds of the defendant company are justly and equitably paid, which several questions, *inter alia*, your petitioner is advised by counsel and believes will necessarily become subject-matters of controversy in this suit.

That, as a creditor of said defendant company and a holder of its second-mortgage bonds and coupons of its first-mortgage bonds, your petitioner is interested in the various questions and subject-matters of controversy which will arise, and desires to be made a party defendant in this case, so that the petitioner may take such steps in said cause and as to the several matters now pending before the different masters appointed by this honorable court as the petitioner may be advised *is* proper in the premises.

The petitioner therefore prays this honorable court to permit the petitioner to intervene and be made a party defendant *pro inter esse suo* in above-entitled case, and to have such other and further relief in the premises as to justice and equity may appertain and
401 to your honorable court may seem meet.

And the petitioner will ever pray, &c.

FIRST NATIONAL BANK
OF GREENVILLE, PA.,
By J. B. BRAWLEY, *Att'y.*

WESTERN DISTRICT OF ——, } ss:
State of Pennsylvania, County of ——, }

C. R. Beatty, being duly sworn according to law, doth depose and say that he is cashier of the First National Bank of Greenville, Pa.,

the petitioner above named; that he has read the above and foregoing petition, and the facts therein stated are just, true, and correct, according to the best of his knowledge and belief.

C. R. BEATTY,
Cashier First Nat'l Bank, Greenville, Pa.

Sworn to and subscribed before me this 24th day of June, A. D. 1885.

[SEAL.] RALPH MAXWELL,
Notary Public.

402 *Petition of First National Bank of Greenville, Pa., to be Made a Party Defendant pro inter esse suo.*

May Term, 1884.

CHARLES L. YOUNG *et al.*
vs. } No. 17.
SHENANGO AND ALLEGHENY RAILROAD COMPANY.

And now, July 6, 1885, the within petition presented and ordered to be filed, and the same is set for hearing on Monday, July 13, 1885, at 10 a. m., notice to be given to the att'ys for plaintiffs and to the att'ys for the Shenango & Allegheny R. R. Co.

By the court:

H. D. GAMBLE, *Clerk.*

J. B. BRAWLEY,
Att'y for Petitioner.

403 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

CHARLES L. YOUNG, and HENRY W. TYLER
vs. } No. 17.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY.

To the honorable judges of said court:

The petition of Wick Brothers & Company, of Youngstown, Ohio, would respectfully represent that they are an association of persons not incorporated, but doing a general banking business at Youngstown, Ohio, and is a copartnership under the style and firm name of Wick Brothers & Company, composed of the following persons: Paul Wick, Henry Wick, John C. Wick, Lucretia G. Wick, Lucretia H. Bonnell, and Emily Bonnell.

That the plaintiff, in their bill of complaint filed in the above-entitled case against the defendant, among other things, prays:

"I. That the property of the company defendant shall be administered and applied in the manner and for the purpose to which it ought, under the circumstances, to be applied, and so
404 that the same may be justly and equitably applied toward the payment of its debts."

"II. That the proper person be appointed to take possession, control, and care of the property of the corporation defendant which may be within the jurisdiction of this court."

That, under and in pursuance of the bill and the prayer, this honorable court appointed Thomas Powell Fowler, Esq., receiver of said railroad company, its property and franchises, who accepted the trust and took possession of said railroad and its property and franchises, and is now in possession thereof.

Your petitioner would further represent that the said defendant is indebted to them in the sum of two thousand six hundred dollars ($2,600.00), being the amount due upon a certain promissory note made, executed, and delivered by the defendant to the Mercer Mining and Manufacturing Company, or order, for the sum of two thousand five hundred dollars ($2,500.00), dated February 12, 1884, payable sixty (60) days after date; that the same was duly indorsed by the said payee to the plaintiff, who is the owner and holder thereof, for a full and valuable consideration obtained in the ordinary course of their business as bankers; that the entire amount of two thousand six hundred dollars ($2,600.00) and upward is now due and payable to your petitioner from the Shenango and Allegheny Railroad Company, and for which your petitioner holds as collateral security five thousand dollars ($5,000.00) of the bonds of the
405 said defendant, with eight (8) years' interest coupons past due, attached of the said Shenango and Allegheny Railroad Company, which are dated as of the 2nd of July, 1877, and is a second mortgage on forty (40) miles of the said defendant's railroad, and a first-mortgage lien upon the remainder thereof.

That the disputes and controversies exist as to the extent of the lien of the different mortgages in this case, being two mortgages executed by the defendant company upon the property of the said Shenango and Allegheny Railroad Company. The first mortgage in order of time is dated April 1st, 1869, and was made payable to Henry Rawle, as trustee, to secure the payment of the bonds of the said company to the aggregate amount of one million of dollars ($1,000,000.00), with coupons or interest warrants thereto attached, for the payment of the semi-annual interest at seven (7) per cent. per annum. The mortgage commonly known as the second mortgage is dated July 2nd, 1877, and was made payable to J. H. Devereaux, of Cleveland, as trustee, to secure the payment of a like amount of the bonds of the said company, viz., one million of dollars ($1,000,000.00), and under which, your petitioner is informed, bonds to the amount of about four hundred thousand dollars ($400,000.00) have been issued.

That a controversy has arisen between the first and second mortgage bond creditors of the said company as to the extent of the lien
406 of the mortgage of April 1st, 1869, and of the mortgage of July 2nd, 1877, wherein it is claimed and alleged by the trustee and bondholders under said mortgage of July 2nd, 1877, that the said mortgage of April 1st, 1869, covers only that portion of the said railroad extending from the junction of the Shenango and Allegheny railroad with the Erie and Pittsburg railroad,

at Shenango, in West Salem township, county of Mercer, in the State of Pennsylvania, southwardly for a distance of forty (40) miles to a point in the county of Butler, same State.

That your petitioner is advised by counsel learned in the law that the trustee and bondholders under said mortgage of July 2nd, 1877, are right in their controversy, and that the said first mortgage is a lien only to the extent claimed by the said trustee and bondholders under said mortgage of July 2nd, 1877.

That it is admitted that the mortgage of July 2nd, 1877, is a lien upon the entire length of defendant company's road, with all its property and franchises of every nature and kind.

Your petitioner would further represent that it is informed, believes, and expects to be able to prove that a large amount of the mortgage bonds of April 1st, 1869, of the defendant company are justly and equitably paid, which several questions *inter alia* your petitioner is advised by counsel and believes will necessarily become subject-matters of controversy in this suit.

That, as a creditor of said defendant company and holder of its second mortgage bonds, your petitioner is interested in the
407 various questions and subject-matters of controversy which will arise in this case, and desires to be made a party defendant in the above-entitled case, so that your petitioner may take such steps in said case, and as to the subject-matters now pending before the different masters appointed by your honorable court, as your petitioner may be advised *and is* proper in the premises.

Your petitioner, therefore, prays this honorable court to permit them to intervene and be made party defendant *pro interesse suo* in the above-entitled case, and to have such other and further relief in the premises as to justice and equity may appertain and to your honorable court may seem meet, and your petitioner will ever pray.

WICK BROS.,
By PAUL WICK.

408 THE UNITED STATES OF AMERICA,
Northern District of Ohio:

Paul Wick, being duly sworn according to law, doth depose and say that he is one of the members of the firm of Wick Brothers and Company, of Youngstown, Ohio, the above-named petitioner, and that he has read the above and foregoing petition, and the facts as therein stated are just, true, and correct, according to the best of his knowledge and belief.

PAUL WICK.

Sworn to and subscribed before me this 25th day of July, A. D. 1885.

A. W. JONES,
United States Commissioner.

409 *Petition of Wick Bros. & Co., of Youngstown, Ohio, to be Made a Party Defendant Pro Inter Esse Suo. Order.*

Circuit [Court] of United States in Western District of Pennsylvania.
May Term, 1884.

CHAS. L. YOUNG *et al.*, Plaintiff,
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY, Defendant.
} Case No. 17.

Filed July 27, 1885.

H. D. GAMBLE,
Clerk of the Court.

R. B. MURRAY,
Attorney for the Petitioner, Youngstown, Ohio.

410 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

CHARLES L. YOUNG and HENRY W. TYLER
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY.
} No. 17.

To the honorable judges of said court:

The petition of Thomas H. Wells, of Youngstown, Ohio, would respectfully represent that the plaintiffs in their bill of complaint filed in the above-entitled case against the defendant, among other things, pray—

"I. That the property of the company defendant shall be administered and applied in manner and for the purpose to which it ought under the circumstances to be applied, and so that the same may be justly and equitably applied toward the payment of its debts.

"II. That a proper person be appointed to take possession, control, and care of the property of the corporation defendant which may be within the jurisdiction of this court."

That under and in pursuance of the bill and the prayer this honorable court appointed Thomas Powell Fowler, Esq., receiver
411 of said railroad company, its property and franchises, who accepted the trust and took possession of the said railroad and its property and franchises, and has ever since continued and is now in possession thereof.

Your petitioner would further represent that the said defendant is indebted to him in the sum of upward of five thousand four hundred and seventy dollars ($5,470.00) upon a certain promissory note dated February 25th, 1884, payable twenty (20) days after date, with interest at seven (7) per cent. per annum, payable to the order of the Mercer Mining and Manufacturing Company, and indorsed by the said Mercer Mining and Manufacturing Company, and the petitioner, Thomas H. Wells.

That the said defendant failed to pay said note, which the petitioner did pay, and is now the owner and holder thereof; that the entire amount of said note is now due and payable to your petitioner from the Shenango and Allegheny Railroad Company, and for which your petitioner holds as collateral security eight thousand dollars ($8,000.00) of second mortgage bonds, with eight (8) years' interest coupons, past due, attached, of said Shenango and Allegheny Railroad Company.

That disputes and controversies exist as to the extent of the lien of the different mortgages in this case, being two mortgages called the first and second mortgages, executed by the defendant company upon the property of the said Shenango and Allegheny Railroad Company.

The first mortgage is dated April 1st, 1869, and was made
412 payable to Henry Rawle, as trustee, to secure the payment of the bonds of the said company to the aggregate amount of one million of dollars ($1,000,000.00), with coupons or interest warrants thereto attached for the payment of the semi-annual interest at the rate of seven (7) per cent. per annum. The second mortgage is dated July 2nd, 1877, and was made payable to J. H. Devereaux, of Cleveland, Ohio, as trustee, to secure the payment of a like amount of the bonds of the said company, viz., one million of dollars ($1,000,000.00), and under which, the petitioner is informed, bonds to the amount of two hundred thousand dollars ($200,000.00) have been issued.

That a controversy has arisen between the first and second mortgage bond creditors of the said company as to the extent of the lien of the first mortgage, wherein it is claimed and alleged by the trustee and bondholders under said second mortgage that the said mortgage covers only that portion of the Shenango and Allegheny railroad with the Erie and Pittsburgh railroad at Shenango, in West Salem township, Mercer county, Pennsylvania, southwardly for a distance of forty (40) miles to a point in the county of Butler, in the same State.

That the petitioner is advised by counsel learned in the law that the trustee and bondholders under the second mortgage are right in their controversy, and that the said first mortgage is a lien only to the extent claimed by the said trustee and bondholders under said mortgage; that it is admitted that the second mortgage is a
413 lien upon the entire length of defendant company's road, with all its property and franchises of every nature and kind.

Your petitioner would further represent that questions arise in said case as to the amount that is due and payable upon said first-mortgage bonds of defendant company now outstanding and unpaid; that a controversy exists in the case as to the same, which questions, *inter alia*, your petitioner is advised by counsel and believes will necessarily become subject-matters of controversy in this suit.

That as a creditor of said defendant company and holder of its second-mortgage bonds your petitioner is interested in the various

of the said company, viz., one million of dollars ($1,000,000.00), and under which, the petitioner is informed, bonds to the amount of two hundred thousand dollars ($200,000.00) have been issued.

That a controversy has arisen between the first and second mortgage bond creditors of said company as to the extent of the lien of the first mortgage, wherein it is claimed and alleged by the trustee and bondholders under said second mortgage that the said first mortgage covers only that portion of the Shenango and Allegheny railroad with the Erie and Pittsburgh railroad at Shenango, in West Salem township, Mercer county, Pennsylvania, southwardly for a distance of forty (40) miles, to a point in the county of Butler, same State.

That the petitioner is advised by counsel learned in the law that the trustee and bondholders under the second mortgage are right in their controversy, and that the said first mortgage is a lien only to the extent claimed by the said trustee and bondholders under said second mortgage.

That it is admitted that the second mortgage is a lien upon the entire length of defendant company's road, with all its property and franchises of every nature and kind.

419 Your petitioner would further represent that it is informed, believes, and expects to be able to prove that a large amount of the first-mortgage bonds of defendant company are justly and equitably paid, which several questions, *inter alia*, your petitioner is advised by counsel and believes will necessarily become subject-matters of controversy in this suit.

That as a creditor of said defendant company and holder of its second-mortgage bonds your petitioner is interested in the various questions and subject-matters of controversy which will arise in this case, and desires to be made a party defendant in the above-entitled case so that the petitioner may take such steps in said case and as to the subject-matters now pending before the different masters appointed by your honorable court as the petitioner may be advised *and is* proper in the premises.

Your petitioner therefore prays this honorable court to permit it to intervene and be made a party defendant *pro inter esse suo* in the above-entitled case, and to have such other and further relief in the premises as to justice and equity may appertain and to your honorable court may seem meet.

And your petitioner will ever pray.

H. O. BONNELL,
Pres't Mahoning National Bank.

420 UNITED STATES OF AMERICA, *The Northern District of Ohio:*

Henry O. Bonnell, being duly sworn according to law, doth depose and say that he is president of the Mahoning National Bank of Youngstown, Ohio, the above-named petitioner, and that he has read the above and foregoing petition, and the facts as therein stated are just, true, and correct, according to the best of his knowledge and belief.

H. O. BONNELL.

Sworn to and subscribed before me this 24 day of July, A. D. 1885.

A. W. JONES,
United States Commissioner.

And now, July 27, 1885, the within petition — presented and the same is ordered to be filed, and Wednesday, July 29, 1885, at 10 a. m. — fixed for hearing same, notice thereof to be given to counsel for the complainant and defendant.

By the court:

421 *Petition of Mahoning National Bank of Youngstown, Ohio, to be Made a Party Defendant pro inter esse suo. Order.*

In Circuit Court of United States, Western District of Pennsylvania. May Term, 1884.

CHARLES L. YOUNG *et al.*, Plaintiffs,
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY, Defendant. } Case No. 17.

Filed July 27, 1885.

H. D. GAMBLE,
Clerk of the Court.

Youngstown, Ohio.

R. B. MURRAY,
Attorney for Petitioner.

422 In the C. Court of the U. S. for W. D. of Pa. May Term, 1884. In Equity.

CHARLES L. YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY R. R. Co. } No. 17.

And now, June 22nd, 1885, it appearing that the notice under the order of June 9th, 1885, on the petition of James J. Shryock, a creditor, to intervene, &c., has been duly served, the court do now, upon consideration of said petition of James J. Shryock, grant the prayer thereof, and he is now allowed to intervene as a party defendant in this case.

By the court:

423 *Order Allowing James J. Shryock to Intervene as a Party Defendant.*

May Term, 1884. In Equity.

CHARLES L. YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY R. R. Co. } No. 25.

Filed June 22, 1885.

424 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY W. TYLER and CHARLES L. YOUNG
against
THE SHENANGO & ALLEGHENY RAILROAD COMPANY.

A motion having been made before said court, on the petition of the "Bristol & South Wales Railway Wagon Company, Limited," the Union Rolling Stock Company, Limited, and William A. Adams, praying that they may be made parties defendant in the above-entitled cause, and the matter having been argued by the counsel of the petitioners and the counsel of the complainants, and the said matter having received due consideration, and the complainants, Henry W. Tyler and Charles L. Young, having consented that the petitioners be allowed to intervene, as above stated, it is on this 23rd day of May, 1885—

Ordered, That the said Bristol & South Wales Railway Wagon Company, Limited, the Union Rolling Stock Company, Limited, and William A. Adams be admitted as defendants in this cause, and that they have leave hereafter to make such application to this court from time to time as they shall be advised.

Dated May 23, 1885.

By the court:

425 *Order.*

U. S. Circuit Court, Western Dist. of Penn. May T., 1884.

HENRY W. TYLER and CHARLES L. YOUNG
against
THE SHENANGO & ALLEGHENY RAILROAD COMPANY. } No. 17.

Davies, Cole & Rapallo, attorneys for ——.

Filed May 23, 1885.

426 In U. S. Circuit Court, Western District of Pennsylvania. May Term, 1884.

TYLER and YOUNG
vs.
SHENANGO & ALLEGHENY RAILROAD CO. } No. 17.

And now, to wit, July 13, 1885, in pursuance of notice to counsel of plaintiffs, and of the Shenango and Allegheny Railroad Co., the petitions of the First National Bank of Cleveland, Ohio; the First National Bank of Greenville, Pa., and the Second National Bank of Erie, Pa., for leave to intervene came on to be heard, and upon due consideration thereof it is ordered that said petitioners have leave to intervene and be made parties defendants *pro inter esse suo* in the above-entitled cause.

By the court:

427 *Order Allowing First Nat'l Bank, Cleveland; First Nat'l Bank, Greenville, and Second Nat'l Bank, Erie, to Intervene as Defendants herein.*

May Term, 1884.

CHAS. L. YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY R. R. CO. } No. 17.

Filed July 13, 1885.

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428 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

CHARLES L. YOUNG, *et al.*
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

To E. S. Templeton, Esq., attorney for the Shenango and Allegheny Railroad Company;

You are hereby notified that on the 27th day of July, 1885, the petitions of the Mahoning National Bank of Youngstown, Ohio; Thomas H. Wells, Youngstown, Ohio, and Wick Brothers & Company, of Youngstown, Ohio, were presented to the circuit court of the United States for the western district of Pennsylvania, praying for leave to intervene *pro inter esse suo* as parties defendant in the above-stated case, and the said court thereupon ordered and decreed that the same be filed in said case, and fixed Wednesday, the 29th day of July, 1885, at 10 o'clock a. m., for hearing the same, notice thereof to be given to the attorneys for the plaintiffs and for the Shenango and Allegheny Railroad Company.

429 You are therefore hereby notified of the said proceedings and the order of the said court.

ROBT B. MURRAY,
Attorney for the Mahoning National Bank of Youngstown, Ohio; T. H. Wells, of Youngstown, Ohio, and Wick Bros. & Co., of Youngstown, Ohio.

And now, July 29th, 1885, service of the within notice is hereby accepted for defendants. We hereby consent that the within-named petitions of Mahoning Nat'l Bank of Youngstown, Ohio; Wick Bros. & Co., of Youngstown, Ohio, and T. H. Wells, of same place, — be made parties defendant *pro inter esse suo* in the within-stated case —, prayed for in their petitions.

E. J. TEMPLET,
Att'y for Shenango and Allegheny R. R. Co.

430 *Notice to Def'ts' Att'y of Petition of Mahoning National Bank, Wick Bros. & Co., and T. H. Wells, for Leave to Intervene, and Order Fixing Time for Hearing.*

Circuit Court of the United States, Western District of Pennslyvania.
May Term, 1884. Equity Docket.

CHARLES L. YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

431 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

CHARLES L. YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

To Wayne McVeagh, Esq., attorney for plaintiffs in the above case:

You are hereby notified that on the 27th day of July, 1885, the petitions of the Mahoning National Bank of Youngstown, Ohio; Thomas H. Wells, Youngstown, Ohio, and Wick Brothers & Company, of Youngstown, Ohio, were presented to the circuit court of the United States for the western district of Pennsylvania, praying for leave to intervene *pro inter esse suo* as parties defendant in the above-stated case; that the said court thereupon ordered and decreed that the same be filed in said case, and fixed Wednesday, the 29th day of July, 1885, at 10 o'clock a. m., for hearing the same, notice therefor to be given to the attorneys for the plaintiffs and for the Shenango and Allegheny Railroad Company.

You are therefore hereby notified of said proceedings
432 and the order of said court.

ROBT B. MURRAY,
Attorney for the Mahoning National Bank of Youngstown, Ohio; T. H. Wells, of Youngstown, Ohio, and Wick Brothers & Company, of Youngstown, Ohio.

And now, July 29th, 1885, service of within notice is hereby accepted for pl'ffs, and we hereby consent that the within-named petitions of Mahoning Nat'l B'k, Wick Brothers & Co., and T. H. Wells, all of Youngstown, Ohio,— made parties defendants *pro inter esse suo* in the within-stated case —, as prayed for in petitions.

WAYNE MACVEAGH,
Per T. T. BESHAM,
Attorney for Pl'ff.

433 *Notice to Pl'fs' Att'y of Petitions of Mahoning Nat'l B'k of Youngstown, O.; Wick Bros. & Co., and T. H. Wells for Leave to Intervene, and Order Fixing Time of Hearing.*

Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884. Eq. Docket.

CHARLES L. YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

For acceptance of service see over.

434 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

YOUNG & TYLER
vs.
SHENANGO & ALLEGHENY RAILROAD COMPANY. } No. 17.

And now, July 29, 1885, the petitions of Thos. H. Wells, Wick Bros. & Co., and the Mahoning Nat'l Bank of Youngstown, Ohio, came on to be heard, and notice thereof having been given as ordered, it is now ordered that the prayer of said petitioners to be allowed to intervene in this cause as defendants *pro inter esse suo* be granted, and said petitioners are permitted to intervene accordingly.

By the court:

H. D. GAMBLE, *Clerk.*

435 *Order Permitting T. H. Wells, Mahoning Nat'l Bank, and Wick Bros. & Company to Intervene herein as Defendants.*

Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

YOUNG & TYLER
vs.
SHENANGO & ALLEGHENY R. R. Co. } No. 17.

Filed July 29th, 1885.

436 In the Circuit Court of the United States, Western District of Pennsylvania. March Term, 1884.

YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

The answer of Thomas Powell Fowler, receiver of the Shenango and Allegheny Railroad Company to the petition of Henry Rawle, trustee, respectfully showeth as follows:

First. This respondent believes that the facts set forth in the first paragraph of the petition are true, and further saith that the appointment of this respondent as receiver was for the best interest of all

parties concerned in the property of the said railroad company, and in order that the rights of all parties might be protected and the property rendered as productive as possible. This respondent believes that his appointment as receiver and the management of the property since said appointment have enured to the benefit of all parties interested in the said property.

Second. The respondent admits the averments contained in the second paragraph of the petition.

Third. The respondent does not admit the averments con-
437 tained in the third and fourth paragraphs of the petition, and prays that, if material, due proof thereof may be made.

Fourth. This respondent does not admit that by reason of the execution and delivery of the mortgage of April 1st, 1869, to the said Henry Rawle, trustee in the petition mentioned, the same became, and has continued to be, a valid first lien, for the purpose of securing the payment of the said bonds aggregating one million dollars, prior to all other liens and incumbrances upon the railroad from Greenville to Hilliard's, and upon the properties, real, personal, and mixed, of the said railroad company, and of its franchises, side tracks, and branches, as in the fifth paragraph of the petition set forth. This respondent further says that as respects the said bonds aggregating one million dollars the lien of the said mortgage does not extend to or cover the following portions of the said railroad:

1. That portion of the railroad extending from the junction of the Shenango and Allegheny railroad with the Erie and Pittsburgh railroad to Greenville.

2. That portion of the said railroad extending from Annondale station to Hilliard's, in Butler county.

3. The branch railroad, extending over a length of two and a half miles, at Bull Valley.

4. The south branch of the said Shenango and Allegheny Railroad Company, extending over a distance of four and a half miles.

438 5. The Coaltown branch of the said Shenango and Allegheny railroad, extending over a distance of two and a half miles.

As to the extent and nature of the said lien (if any) upon the residue of the said railroad this respondent prays that proof thereof be made by the petitioner.

And this respondent, further answering, says that the Shenango and Allegheny railroad consists of a line of railway within the State of Pennsylvania, extending from Greenville, Mercer county, at the junction of the New York, Pennsylvania and Ohio railroad with the Erie and Pittsburgh railroad, to Hilliard's, in Butler county, a distance of forty-seven miles, and that the company also operates and partly owns the following branches:

South branch and sidings	5.1 miles.
Bull Valley branch and sidings	3.2 "
Coaltown branch and sidings	3.2 "
Filer and Reed branches, partly owned by the company	3.9 "
Sidings	11.7 "
Butler extension	22 "

Making a total of 95 miles of railroad operated, sixty-nine miles of which are wholly owned by the Shenango and Allegheny Railroad Company and 3.9 miles of which are partly owned by the said company, together with the Butler extension or West Penn. and
439 Shenango Connecting railroad. Of the foregoing line or lines of railway a portion only, as already stated, viz., something more than 40 miles, is covered by the mortgage of which the said Henry Rawle is trustee.

The said railroad company is also interested in certain coal property, particulars of which are set forth in the reports of this respondent heretofore filed in this cause. This respondent is advised and believes and shows to the court that the value of the property aforesaid is dependent upon its being held and operated and used as a whole, and that the sale of a portion of the road would be highly disadvantageous, and would be calculated to imperil the security of the various incumbrances. The price realized by the sale of the property as a whole would be much more likely to result in producing a fund sufficient to pay incumbrances than a disposition of the property piece-meal.

Fifth. This respondent does not admit the averments contained in the sixth, seventh, and eighth paragraphs of the petition, and prays that, if material, due proof thereof may be made.

Sixth. This respondent does not admit the averments contained in the ninth paragraph of the petition. The interest on the said bonds, aggregating one million dollars, which fell due on April 1st, 1884, being the first interest that matured after this respond-
440 ent's appointment as receiver, was paid. The interest which matured on the 1st October, 1884, and on the 1st April, 1885, has not been paid. Every effort has been made by this respondent to meet the interest and other charges upon the road from its earnings, and, so far from this respondent admitting that there is no likelihood or probability that the present condition of affairs may be changed, he avers that from his observation and experience in the management of the road a slight increase in the rate of transportation of freight would enable the road, even if it did no more than the present amount of business, to meet the interest on its fixed charges. This respondent believes that the interests of bondholders and other creditors are served by having had the road placed in the hands of a receiver, and thus avoiding the executions which were threatened; and this respondent further says that the expenses which have been incurred and outlays which have been made in thus protecting the property and the interests of creditors have been incurred not only for the advantage of the bondholders of the second series, and other creditors, but for the bondholders of the first series, and that such expenses and charges and outlays are, as this respondent is advised and avers, entitled to the same priority as the costs in the cause. For some of said outlays and expenses receivers' certificates have been issued under the authority of the court in this cause; for others an application for leave to issue such certificates is now pending and has been referred to a master.

441 Seventh. This respondent believes that the averments contained in the tenth paragraph of the petition are true.

Eighth. This respondent shows to the court that questions exist as to the respective priorities of the bondholders secured by the said mortgage of April 1st, 1869; that other questions of priority such as those relating to the expenses of this cause and other charges may arise, and that it will be highly inexpedient to make any order of sale of the property covered by the mortgage until the exact extent of said encumbrances and charges be determined and the order of priority of the said liens ascertained. Until such matters are determined it would not be possible for encumbrancers to know how to protect their respective interests at said sale, and the uncertainty thus existing would have an injurious effect upon the said sale and upon the price to be obtained thereat.

The liens and charges against the property of the said railroad company and the other thereof are believed and averred by this respondent to be as follows:

Receivers' certificates already issued	$135,000
Claims for which a further issue of certificates *have* been asked	11,000
(The two preceding items are entitled to be paid *pari passu.*)	
First-mortgage bonds, principal	1,000,000
One year's interest	70,000
442 First-mortgage bonds, second issue	200,000
Accumulated interest	100,000
First-mortgage bonds placed as collateral security, $207,000, to secure floating debts amounting to	150,000
Car-trust obligation, amounting to	70,000

Ninth. Among the claims which are alleged to be liens having priority over other incumbrances are those of The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and William A. Adams. These parties claim, as this respondent is advised, to have made with the Shenango and Allegheny Railroad Company a car-tru t contract, under which it is alleged certain amounts are due from the said Shenango and Allegheny Railroad Company, and for which amounts priority is claimed by the said parties. Under an order heretofore made in this cause on the 23rd of May, 1885, the said Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and the said William A. Adams were made parties defendant in this cause, and upon their application an order was made referring it to a special master to ascertain and report to this court the sum due, and ordering the receiver to pay the same. T. De Witt Cuyler was appointed master, and the reference is still pending before him.

443 Tenth. The questions of the settlement of the receiver's accounts, and also the amount to be awarded him by way of compensation and other allowances, and whether receivers' certificates shall be issued for the same, and what shall be the priority or

order of payment of such certificates, have been likewise referred to a master. A meeting before the said master was held at Philadelphia on Monday, June 15th, 1885, and was adjourned at the request of counsel for the said Henry Rawle, trustee, in order that he might have, if he desired, an opportunity of further cross-examining this respondent or of putting in testimony under the said reference.

Wherefore this respondent suggests to the court that the said petition be referred to a master to inquire into and report upon the allegagations in the said petition and in this answer contained, and particularly to ascertain and determine the property or properties subject to the lien of the said mortgage and the respective priorities of parties holding bonds and of those claiming other charges against the said railroad, and so that the same may be reported fully to this court.

443½ STATE OF NEW YORK,
City & County of New York:

Thomas P. Fowler, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer, so far as the same are stated of this deponent's knowledge, are true, and, so far as the same are stated on information and belief, are believed by him to be true.

THOMAS P. FOWLER.

Sworn and subscribed to before me this first day of July, A. D. 1885.

[SEAL.] W. F. DUNNING,
Notary Public, N. Y. City & Co.

444 *Answer of T. P. Fowler, Receiver, to Petition of Henry Rawle, Trustee.*

In the Circuit Court of the United States, Western District of Pennsylvania. May Term, 1884.

YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Filed July 3, 1885.

445 In the Circuit Court of the United States, Western Dist. Pa. May Term, 1884. In Equity.

CHARLES L. YOUNG and HENRY W. TYLER
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

To the honorable the judges of said court:

The answer of The Shenango and Allegheny Railroad Company, the defendant above named, to the petition of Henry Rawle, trustee, filed June 6, 1885, respectively shows:

1st. That the averment in the 2nd paragraph of said petition that the railroad of the corporation defendant extends from the Erie and Pittsburgh railroad, in Mercer county, Pennsylvania, to a point at or near the mouth of Bear creek, in Butler county, Pennsylvania, is untrue and incorrect, but that said railroad extends from Greenville, in Mercer county, to Hilliard's, in Butler county; that by virtue of an act of the General Assembly of Pennsylvania, approved 14 April, 1870, P. L. p. 15–16, the said corporation defendant, with the expectation and intention of completing its railroad to Amasa crossing to connect with the Lake Shore and Michigan Southern
446 railroad, did, in the year 1882, extend the main line of its said railroad to Greenville, Pa., and purchase the right of way for nearly the entire distance to said Amasa crossing, so that Greenville is now the western terminus of said road.

2nd. That the statements contained in the fourth and fifth paragraphs of said petition as to property covered or conveyed by the mortgage of April 1st, 1869, are untrue and incorrect in alleging that all the railway, extensions, &c., of said corporation defendant are covered by said mortgage, but that said mortgage, in express terms, is confined to the part of the main line of said road between the then western terminus at the junction with the Erie and Pittsburgh railroad and a point in Butler county forty miles southeastwardly from said western terminus; that the said railroad extends in a southeastwardly direction from Shenango aforesaid about forty-five miles, and in a northerly direction from Shenango to Greenville, a distance of about two miles; that there are numerous branches and sidings to said railroad, some connected with said forty miles, and some with the two ends of the road not covered by said mortgage; that a separate sale of the portion of said railroad, appurtenances, and franchises covered by said mortgage of April 1, 1869, would not be for the best interest of the several parties, but would result in a sacrifice of the property; that if and when, in the
447 opinion of this honorable court, the sale of said railroad becomes necessary it would be for the best interest of all parties concerned that it should be sold as a whole, and a distribution of the proceeds be made to the parties legally and equitably entitled thereto.

3d. That the allegation that the locomotives and cars which the company owns are old and of little value is untrue and incorrect, and that the rolling-stock of the said road is in good condition and valuable.

That a great part of the main line of said railroad is laid with good steel rails and good ties; that, with branches and sidings, said railroad now comprises about seventy-three miles of track.

That correct statements of the property of this company are made in the reports of Thomas P. Fowler, receiver, and filed in this case, and especially in Schedule A of the report dated June 2, 1884, to which reports, as well as to the other papers filed in this case, this respondent asks leave to refer as occasion may require.

4th. That the first default in payment of the interest on said first

issue of bonds was made October 1, 1879; that said interest was paid on or about April 1, 1880.

That on April 1, 1880, default was made in payment of the interest then due on said bonds, but said interest was paid about October 1, 1880, and in the same way default was made in the payment of each subsequent installment of interest, but payment
448 thereof, or of a large part thereof, was made at the end of about six months, except that the interest due October 1, 1884, has not yet been paid.

5th. That it is not true, as alleged in the eighth paragraph of said petition, that the bondholders therein referred to are the *bona fide* holders for value of the said bonds.

That many of the said bonds were sold by the then officers and directors of the defendant company to themselves at a very large discount, being at less than their real value and on more favorable terms than were given the general public.

That on a part of the bonds so sold to themselves they allowed themselves a discount of 40%.

That on the balance so sold they allowed themselves a discount of 20%, and, in addition, gave themselves Mercer Mining and Manufacturing Company stock to the amount of 40% of the bonds so sold to themselves.

That on or about September, 1872, the said officers sold said Mercer Mining and Manufacturing Company stock for par, so that their bonds would cost them forty per cent. Since that time they have received seven per cent. interest on the par value of said bonds, which would make the interest they have received for twelve years 17½% per annum.

That the defendant company is unable to give a statement of all the bonds so sold by the officers of said defendant corpora-
449 tion to themselves, but that the exhibit hereto attached and marked A is a statement of said bonds sold by said officers to themselves, and the dates of said sales, so far as now known to the present officers of defendant company, but they expect to be able to prove that other and larger amounts were taken by said officers.

That the exhibit hereto annexed and marked B shows the officers of said corporation defendant from its organization to March 3, 1873.

That the now officers of said company are informed and believe that the five thousand dollars of bonds referred to as held by Lewis Walker and the hundred and two thousand as held by Lewis Walker, att'y, are a part of the bonds sold by Geo. B. Delamater, as a director of said defendant corporation, to himself; also that the eighty-six thousand five hundred referred to as held by Carey and Whiteridge, att'ys, are part of bonds sold by R. B. Potter, as a director of said corporation, to himself, and that the twelve thousand referred to as held by Wm. Reynolds are a part of the bonds so sold by him, as a director of said corporation, to himself.

That the seventeen thousand dollars referred to as held by James J. Shryock are a part of the bonds so sold by him, as president of said corporation, to himself; that none of said bonds above de-

scribed have passed into the hands of *bona fide* holders for value.

That the now officers of said company believe that many others of the bonds referred to by said petitioner subject to the same defense and are held by persons who took them without value, or with notice of such defense.

6th. That the net earnings of said defendant company for the year ending March 15, 1885, as shown by the receivers' report to this honorable court, to which leave is asked to refer, were $67,367.67; that said year was one exceptionally bad for railroads.

That the Shenango and Allegheny Railroad Company depends largely upon the coal business, which was very much depressed during said year; that it would require a very small percentage of increase of business to enable said road to pay all fixed charges and interest and put said road on a paying basis.

That a revival of the iron business would in all probability furnish such increase; that the building of an oil-pipe line to Butler, which is now in contemplation by the Butler County Pipe Line Company, for which a charter has been obtained in behalf of responsible parties, and will probably be built, would also furnish such increase; that the completion of the Ohio River and Lake Erie railroad from Greenville to Girard would, by furnishing an outlet to the lakes and Canada for coal, also furnish such an increase of business as to relieve said corporation defendant of its present financial difficulties, and that the prospects of said road being completed are now very favorable.

That a number of mines have been opened along the line of said road which have as yet furnished very little traffic, but they will, on a revival of business, largely increase the business and earnings of the corporation defendant.

7th. That the indebtedness of the corporation defendant does not, and never did, aggregate $1,977,223.66; that the report of the receiver does not show such an amount of indebtedness, and that the averment in the ninth paragraph of said petition to that effect is incorrect and untrue.

That such figures appear on page 28 of the receiver's report of June 2, 1884, but are simply the footings of the balance-sheet and not statement of indebtedness, but include beside indebtedness the capital stock of $200,000.

That the only pressing debts of the said corporation defendant are a portion of first issue of bonds.

That about $200,000 of said first issue of bonds are held by Charles Morrison, and the $200,000 of second issue of bonds are held by the stockholders of defendant corporation, and they wish a settlement of the company's affairs which will protect all interests, and are opposed to any action which will not provide for second issue of bonds and the floating debt.

That the Mercer Mining and Manufacturing Company do not ask for the present payment of their claim of $119,083.25, but are willing to give time for a reorganization of defendant company.

8th. That a portion of the receiver's certificates referred to in ninth paragraph of said petition are, by the decree of this honorable court, made a lien prior to said mortgage of April 1, 1869.

9th. That the said mortgage of April 1, 1869, so far as it purports to convey or cover more than the forty miles of main line hereinbefore referred to and its appurtenances, equipment, rolling-stock, and things belonging to the company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of defendant corporation and is therefore void.

That the president and secretary of defendant company had no authority to mortgage the branches or extensions of said railroad by said mortgage of April 1, 1869.

10th. That the exhibits hereto attached and marked, respectively, D and E, show the amounts paid by the corporation defendant to the holders of each of the two classes of bonds mentioned in the 5th paragraph hereof as sold by the then officers to themselves at 40% per cent. and 20% per cent. discount, respectively (a thousand-dollar-bond being taken as an example in each case).

11th. That the bonds sold by the officers to themselves in 1867, at 40% discount, were afterwards (to *int.* about April 4, 1869) exchanged by them for bonds secured by the mortgage of 453 & 454 April 1, 1869.

12th. That by deed of trust or mortgage, dated July 1, 1877, the corporation defendant conveyed to John H. Devereux, trustee, all the property and franchises then existing or thereafter to be acquired, to secure bonds in the sum of $1,000,000, of which there are outstanding $407,000.

13th. That there are several liens on the property of the corporation defendant, as to the extent, validity, and priorities of which there are disputes.

That there is a dispute as to the property covered respectively by the mortgages of April 1, 1869, and July 1, 1877; that disputes exist as to the lien of the certificates issued by the receiver. A fuller statement of said liens appears in the reports of said receiver.

That if the property of defendant company is sold before the validity, extent, and priority of these liens is judicially determined, bidding will be deterred on account of the risk and uncertainty, and the property will be in great danger of being sacrificed.

[SEAL.] THE SHENANGO AND ALLEGHENY R. R. CO.

By J. F. BLAIR, *President.*

455 "EXHIBIT A."

Shenango and Allegheny Railroad Company First-Mortgage Bonds.

The following is a statement of amount of bonds taken by parties named and price paid so far as shown by books of the Shenango & Allegheny R. R. Co.:

J. J. Shryock:

June	8,	1867,	$1,000;	discount,	$400;	am't paid,	$600.
July	3,	"	1,000;	"	400;	"	600.
"	23,	"	2,000;	"	800;	"	1,200.
Dec.	7,	"	1,000;	"	400;	"	600.

New issue.

May	—,	1869,	$8,000;	discount,	$1,600;	am't paid,	$6,400.
Aug.	16,	"	1,000;	"	200;	"	800.
Nov.	4,	"	1,000;	"	200;	"	800.
"	26,	"	500;	"	100;	"	400.
Jan'y	4,	1870,	4,500;	"	900;	"	3,600.
"	18,	"	7,000;	"	1,400;	"	5,600.

G. B. Delamater:

July	23,	1867,	$2,000;	discount,	$800;	am't paid,	$1,200.
Dec.	7,	"	1,000;	"	400;	"	600.
Sep.	—;	1868,	1,000;	"	400;	"	600.

456 New issue.

May	—,	1869,	$9,000;	discount,	$1,800;	am't paid,	$7,200.
July	—,	"	3,000;	"	600;	"	2,400.
Nov.	15,	"	10,500;	"	2,100;	"	8,400.
Jan'y	1,	1870,	26,000;	"	5,200;	"	20,800.
Aug.	3,	"	18,000;	"	3,600;	"	14,400.
"	8,	"	2,000;	"	400;	"	1,600.
Sep.	21,	"	15,000;	"	3,000;	"	12,000.
Oct.	21,	"	15,000;	"	3,000;	"	12,000.
June	10,	1872,	21,000;	"	4,200;	"	16,800.

Wm. Reynolds:

July	3,	1867,	$2,000;	discount,	$800;	am't paid,	$1,200.
Aug.	31,	"	2,000;	"	800;	"	1,200.
Dec.	2,	"	1,000;	"	400;	"	600.
"	"	"	1,000;	"	400;	"	600.

New issue.

May	—,	1869,	$9,000;	discount,	$1,800;	am't paid,	$7,200.
Sep.	30,	"	3,000;	"	600;	"	2,400.
Nov.	26,	"	5,500;	"	1,100;	"	4,400.
Dec.	4,	"	17,500;	"	——;	"	——.
"	"	"	11,500;	"	5,800;	"	23,200.
Jan'y	18,	1873,	3,000;	"	600;	"	2,400.

457 R. P. Potter:

May —, 1869,	$1,000;	discount,	——;	am't paid,	——
" "	10,000;	"	$6,000;	"	$24,000.
" "	10,000;	"	——;	"	——
Sep. 4, "	10,000;	"	2,000;	"	8,000.

H. Rawle:

June 8, 1867,	$2,000;	discount,	$800;	am't paid,	$1,200.
Oct. 24, "	2,000;	"	800;	"	1,200.
Jan'y 13, 1868,	1,000;	"	400;	"	600.
Feb'y 18, "	2,000;	"	800;	"	1,200.
May 4, 1869,	12,000;	"	2,400;	"	9,600.
Jan'y 18, 1872,	2,500;	"	500;	"	2,000.
" " 1873,	2,000;	"	400;	"	1,600.

458 EXHIBIT "B."

Shenango and Allegheny Railroad Co.

Officers elected Jan'y 14, 1867.

Henry Rawle, president.
Samuel Griffith, T. H. Wells, James M. Breden, H. B. Wick, Wm. Reynolds, Chas. W. Watson, directors.
W. Thorp, president.
L. D. Williams, secretary.

JAN'Y 13, 1868.

Henry Rawle, president.
J. J. Shryock, vice-president.
W. Reynolds, James M. Breden, T. H. Wells, G. B. Delamater, directors.
W. Thorp, treasurer.
L. D. Williams, secretary.

459 FEBRUARY 9, 1869.

J. J. Shryock, president.
W. Reynolds, A. B. Potter, G. B. Delamater, H. Rawle, H. B. Wick, T. H. Wells, directors.

FEB'Y 10.

H. Rawle selected trustee for mortgage.
W. Thorp, secretary & treasurer.

JANUARY 12, 1870.

J. J. Shryock, president.
R. B. Potter, Geo. B. Delamater, H. Rawle, H. B. Wick, T. H. Wells, W. Reynolds, directors.

460 FEBRUARY 17, 1871.

J. J. Shryock, president.
G. B. Delamater, Wm. Thorp, W. Reynolds, T. H. Wells, G. H. McKibben, H. Rawle, directors.
G. H. McKibben, secretary & treasurer.

APRIL 2, 1872.

J. J. Shryock, president.
G. B. Delamater, W. Reynolds, Henry Rawle, M. Thorp, A. F. Allen, directors.
G. H. McKibben, secretary & treasurer.

MARCH 3, 1873.

James B. Hodgkin, president & treasurer.
R. E. O'Brien, Thos. Warnock, W. B. Shattuck, directors.
J. H. Dynes, secretary.
Jno. P. Warner, J. D. Barton.

461 EXHIBIT "D."

Statement of Amount Paid on Ac. $1,000 Bond S. & A. R. R. Co., Sold Oct. 1, 1867, at 60%.

October 1, 1867, cost of bond	$600 00
Int. Oct. 1, 1867, to April 1, 1868, at 7%	21 00
	621 00
Paid	35 00
	586 60
Int. April 1, 1868, to Oct. 1, 1868	20 51
	606 51
Paid	35 00
	571 51
Int. to April 1, 1869	20 10
	591 61
Paid	35 00
	556 51
Int. to Oct. 1, 1869	19 48
	576 09
Paid	35 00
	541 09
Int. to April 1, 1870	18 93
	560 02
Paid	35 00
	525 02
462 For'd	525 02
Int. to Oct. 1, 1870	18 38
	543 40

Paid		35 00
		508 40
Int. to April 1, 1871		17 80
		526 20
Paid		35 00
		491 20
Int. to Oct. 1, 1871		17 20
		508 40
Paid		35 00
		473 40
Int. to April 1, 1872		16 57
		489 97
Paid		35 00
		454 97
Int. to Oct. 1, 1872		15 83
		470 80
Paid		35 00
		435 80
Int. to April 1, 1873		15 25
		451 05
Paid		35 00
		416 05
463 For'd		416 05
Int. to Oct. 1, 1873		14 55
		430 60
Paid		35 00
		395 60
Int. to April 1, 1874		13 82
		409 42
Paid		35 00
		374 42
Int. to Oct. 1, 1874		13 07
		387 49

Paid		35 00
		352 49
Int. to Ap'l 1, 1875		12 34
		364 83
Paid		35 00
		329 83
Int. to Oct. 1, 1875		11 55
		341 38
Paid		35 00
		306 38
Int. to Apr. 1, 1876		10 73
		317 11
Paid		35 00
		282 11
464 For'd		282 11
Int. to Oct. 1, 1876		9 87
		291 98
Paid		35 00
		256 98
Int. to April 1, 1877		8 99
		265 97
Paid		35 00
		230 97
Int. to Oct. 1, 1877		8 08
		239 05
Paid		35 00
		204 05
Interest to Ap'l 1, 1878		7 15
		211 20
Paid		35 00
		176 20
Int. to Oct. 1, 1878		6 17
		182 37

Paid		35 00
		147 37
Int. to Ap'l 1, 1879		5 16
		152 53
Paid		35 00
		117 53
465 For'd		117 53
Int. to Oct. 1, 1879		4 11
		121 64
Paid		35 00
		86 64
Int. to Ap'l 1, 1880		3 04
		89 68
Paid		35 00
		54 68
Int. to Oct. 1, 1880		1 91
		56 59
Paid		35 00
		21 59
Int. to Ap'l 1, 1881		76
		22 35
Paid		35 00
		12 65
Paid Oct. 1, 1881, to April 1, 1884, inclusive		210 00
Total payment on each $1,000 bond over and above the principal and interest at 7%		222 65

466 EXHIBIT "E."

Statement of Amount Paid on Ac. $1,000 Bond of the S. & A. R. R. Co., Sold April 1, 1869, at 80%, with $400.00 of Stock of M. M. & M. Co. Given as Bonus.

April 1, 1869, cost of bond	$800 00
Int. to Oct. 1, 1869	28 00
	828 00
Paid	35 00
	793 00

Int. to Ap'l 1, 1870		27 76
		820 76
Paid		35 00
		785 76
Int. to Oct. 1, 1870		27 50
		813 26
Paid		35 00
		778 26
Int. to Ap'l 1, 1871		27 24
		805 50
Paid		35 00
		770 50
Int. to Oct. 1, 1871		26 96
		797 46
Paid		35 00
		762 46
467 For'd		762 46
Int. to Oct. 1, 1872		26 69
		789 15
Paid		35 00
		754 15
M., M. & M. stock sold at par		400 00
		354 15
Int. to Ap'l 1, 1873		12 40
		366 55
Paid		35 00
		331 55
Int. to Oct. 1, 1873		11 60
		343 15
Paid		35 00
		308 15
Int. to Ap'l 1, 1874		10 78
		318 93

Paid		35 00
		283 93
Int. to Oct. 1, 1874		9 94
		293 87
Paid		35 00
		258 87
Int. to Ap'l 1, 1875		9 06
		267 93
Paid		35 00
		232 93
468 For'd		232 93
Int. to Oct. 1, 1875		8 15
		241 08
Paid		35 00
		206 08
Int. to Ap'l 1, 1876		7 21
		213 29
Paid		35 00
		178 29
Int. to Oct. 1, 1876		6 24
		184 53
Paid		35 00
		149 53
Int. to April 1, 1877		5 23
		154 76
Paid		35 00
		119 76
Int. to Oct. 1, 1877		4 18
		123 94
Paid		35 00
		88 94
Int. to April, 1878		3 11
		92 05

Paid	35 00
	57 05
469 For'd	57 05
Int. to Oct. 1, 1878	2 00
	59 05
Paid	35 00
	24 05
Int. to April 1, 1879	86
	24 91
Paid	35 00
Overpaid	10 09
Paid Oct. 1, 1879, to April 1, 1884, both inclusive	350 00
Total payment on each $1,000 bond over and above the principal and interest at 7%	$360 09

470 STATE OF PENNSYLVANIA, }
Mercer County, } *ss.:*

Before me, a notary public in and for said county, personally came P. E. McCray, who, being duly sworn, says that he is secretary of the Shenango and Allegheny Railroad Company; that the facts contained in the within answer are true, as he verily believes.

P. E. McCRAY.

Sworn and subscribed before me this 3d day of July, 1885.

RALPH MAXWELL,
Notary Public.

471 *Answer of Defendant to Petition of Henry Raule, Esq.*

May Term, 1884.

YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY RAILROAD CO. } No. 17.

Filed July 6, 1885.

H. D. GAMBLE, *Clk.*

472 In the Circuit Court of the United States for the Western District of Pennsylvania. March Term, 1884. In Equity.

CHARLES L. YOUNG and HENRY W. TYLER
against
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, &c. } No. 17.

To the honorable the judges of the said court:

The answer of the defendants, The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, Limited, and William A. Adams, to the petition of Henry Rawle, trustee, for leave to sell under power of mortgage, &c., filed June 6, 1885, respectfully shows—

That they are the owners of one hundred and fifty-six coal cars referred to by the petition of the said Henry Rawle, [in] subdivision 2 of the said petition; that the said gondola coal cars were leased by these defendants to the said Shenango and Allegheny Railroad Company by three several contracts, as follows: Contract No. 1, dated August 1st, 1880, for fifty-six gondola coal cars, and contract No. 3, dated January 20th, 1882, for fifty gondola coal cars—the said contract being in the form ordinarily know as car-trust leases.

473 That by the terms of the said contract of lease No. 1 the said railroad company undertook and agreed to pay upon the delivery of the cars therein mentioned the sum of forty dollars for each of the said cars upon the 1st day of September, 1880, and a subsequent monthly rental of seven dollars and sixty-five cents upon each and every car for sixty succeeding months.

That by the terms of the said contract of lease No. 2 the said railroad company undertook and agreed to pay upon the delivery of the cars therein mentioned the sum of forty dollars for each of the said cars upon the 1st day of September, 1881, and a subsequent monthly rental of seven dollars and sixty-five cents for each and every car for sixty succeeding months.

That by the terms of the said contract of lease No. 3 the said railroad company undertook and agreed to pay upon the delivery of the cars therein mentioned the sum of forty-five dollars for each of said cars upon the 1st day of March, 1882, and a subsequent monthly rental of eight dollars and sixty-one cents for each and every car for sixty succeeding months.

That, in accordance with said agreements of lease, these defendants delivered the said gondola coal cars to the said railroad company, and the said railroad company made the first payments of forty dollars and forty-five dollars on each car, respectively, as required by the several contracts, and paid the regular monthly rentals as reserved in the said contracts up to and including the

474 rentals which fell due upon the 1st day of March, 1883, but after that date no rentals were paid whatever upon any of the three contracts until the one which fell due on the 1st day of June, 1884, which was paid on the 29th day of July, 1884.

That on the 15th day of March, 1884, by an order made by this court in this action, this rolling-stock was taken possession of by

Thomas Powell Fowler, Esq., who was then appointed receiver of all the property of the Shenango and Allegheny Railroad Company, and that since that time the said rolling-stock has been in the possession of the said receiver, and operated by him for the benefit of the said road.

That the said receiver has always since his appointment promised from month to month to pay the rentals of these cars, but that he has utterly failed to do so, and has never paid anything whatever upon the three contracts of lease or otherwise for the use of the said rolling-stock, except the payment above set out of one month's rental upon each of the three contracts, amounting in the aggregate to $1,241.40, on or about the 29th day of July, 1884, and the sum of $16.54 and interest upon the 10th day of October, 1884, and the further sum of $625 paid on or about the 12th day of November, 1884.

That the receiver has always represented to these defendants that this rolling-stock was necessary for the efficient operation of the said railroad, and that it was actually earning for the said railroad a large part of the rentals reserved in the said three contracts of lease.

475 These defendants, further answering, show that, both prior to the appointment of the receiver and subsequent thereto, the rolling-stock belonged to these defendants, was used first by the corporation and subsequently by the receiver, and that practically it was the only means whereby the said railroad company was enabled to make any money whatever; as it fully appears by the petition to which this is an answer that almost the only efficient freight cars in the use of the said railroad company are and have been the cars of these defendants.

These defendants, further answering, show that they are informed and believe that the earnings of these cars, instead of being paid over to these defendants, as they should have been, were diverted to the payment of the interest upon the first-mortgage bonds, which interest was not earned by the said railroad, so that the first-mortgage bondholders have directly received large sums of money which were really due and payable to these defendants.

And these defendants, further answering, show that their rolling-stock aforesaid is being worn out in the service of the said railroad company and of its receiver, and that there is already due a sum of money amounting to more than $30,000 upon the said three contracts of lease, and that the said receiver has refused and still refuses to pay any part of the same to these defendants.

476 And these defendants, further answering, show that upon a presentation of the preceding facts to this honorable court by petition filed on the 23d of May, 1885, these defendants were permitted to intervene in this action, and on the 5th day of June, 1885, by an order of this honorable court, it was referred to T. De Witt Cuyler, Esq., of the city of Philadelphia, to ascertain and report without delay to this court the sum due from the Shenango and Allegheny Railroad Company upon the said three contracts of lease, and if any sum be found by him to be due from the said rail-

road company that he further report how such payment should be made.

That the special master has already held one session and these defendants have put in their proofs and have rested; that the said petitioner, Henry Rawle, has appeared before the said master by his solicitor, and has cross-examined the witness produced by these defendants, and has notified the special master that he desires to examine witnesses in his own behalf.

Wherefore these defendants pray your honorable court—

1st. That you will not authorize or permit the petitioner, the said Henry Rawle, trustee, or any other party to this suit, to sell the property of the said Shenango and Allegheny Railroad Company under any of the mortgages until the right of these defendants shall have been ascertained and satisfied.

2nd. That you will not permit the said petitioner, Henry Rawle, trustee, to take possession of any of the mortgaged property
477 or to interfere with it in any way, until the rights of these defendants shall have been ascertained and satisfied.

3rd. That you will order your receiver to pay to these defendants the moneys which shall be ascertained to be due under said three contracts of lease.

4th. That such other and further relief may be afforded these defendants by your honorable court as may to you seem just and equitable.

DAVIES, COLE & RAPALLO,
Solicitors for the Defendants.

Personally before me came Oliver Adams, Esq., and, being by me first duly sworn, says that the said The Bristol and South Wales Railway Wagon Company, Limited, and the said Union Rolling Stock Company, Limited, are corporations of the Kingdom of Great Britain and having their residence and place of business in said Kingdom of Great Britain, and that the said defendant, William A. Adams, is a resident of the Kingdom of Great Britain and is now residing in England; that the deponent, the said Oliver Adams, is the business agent and attorney-in-fact of the said defendants, and resides in the city of New York; that he is acquainted with all the facts set out in the foregoing answer and that they are true to the best of his knowledge, information, and belief, and that the reasons why this answer is not verified by the said defendants are that the
478 first two of them are foreign corporations and that all their officers reside in the Kingdom of Great Britain; that the third of the said defendants is a resident of the Kingdom of Great Britain and is now residing in England.

OLIVER ADAMS.

Sworn to and subscribed before me this 6th day of July, A. D. 1885.

SAML. R. BENN,
Notary Public, N. Y. Co.

479 *Answer of the Defendants, The Bristol and South Wales Railway Wagon Company, Limited, The Union Rolling Stock Company, and William A. Adams, to the Petition of Henry Rawle, Trustee, of June 6th*, 1885.

U. S. Circuit Court, Southern District of Pennsylvania. May T., 1884.

CHARLES S. YOUNG and HENRY W. TYLER
against
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Davies, Cole & Rapallo, attorneys for said defendants, 32 Nassau street, New York.

Filed July 7, 1885.

480 In the Circuit Court of the United States, Western District of Pennsylvania. March Term, 1884.

YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

The answer of John H. Devereux, trustee of the second mortgage, to the petition of Henry Rawle, trustee, respectfully showeth—

First. This respondent believes that the facts set forth in the first paragraph of the petition are true.

Second. This respondent admits the averments contained in the second paragraph of the petition.

Third. This respondent does not admit the averments contained in the third, fourth, and fifth paragraphs of the petition, and prays that, if material, the proof thereof may be made.

Fourth. This respondent does not admit that by reason of the execution and delivery of the mortgage of April 1st, 1869,
481 to the said Henry Rawle, trustee, in the petition mentioned, the same became and has continued to be a valid first lien for the purpose of securing the payment of the said bonds, aggregating one million dollars, prior to all other liens and incumbrances upon the railroad from Greenville to Hilliard's, and upon the properties, real, personal, and mixed, of the said railroad company, and of its franchises, side tracks, and branches, as in the fifth paragraph of the petition set forth. This respondent further says that as respects the said bonds aggregating one million dollars, the lien of the said mortgage does not extend to or cover the following portions of the said railroad:

1. That portion of the railroad extending from the junction of the Shenango and Allegheny railroad with the Erie and Pittsburgh railroad to Greenville.

2. That portion of the said railroad extending from Amandale station to Hilliard's, in Butler county.

3. The branch railroad extending over a length of two and a half miles, at Bull Valley.

4. The south branch of the said Shenango and Allegheny Railroad Company, extending over a distance of four and a half miles.

5. The Coaltown branch of the said Shenango and Allegheny railroad, extending over a distance of two and a half miles.

482 As to the extent and nature of the said lien (if any) upon the residue of the said railroad, this respondent prays that proof thereof be made by the petitioner.

Fifth. This respondent does not admit the averments contained in the sixth, seventh, and eighth paragraphs of the petition and prays that, if material, due proof thereof may be made.

Sixth. This respondent does not admit the averments contained in the ninth paragraph of the petition, and prays that, if material, due proof thereof may be made.

Seventh. This respondent admits the averments contained in the tenth paragraph of the petition, except only the averment that "no steps whatever subsequent to the filing of the said bill have been taken in said suit," and, on the contrary thereof, he avers that the subpœna in said suit was duly served upon the defendant, The Shenango and Allegheny Railroad Company, and that it has duly appeared and has filed its answer to said bill.

Eighth. This respondent shows to the court on information and belief that a large part of the bonds which were secured by the mortgage or deed of trust bearing date the first of April, 1869, to the petitioner herein as trustee were by the directors of the said Shenango and Allegheny Railroad Company issued to themselves at a price far below their par value and far below their real and intrinsic value, and that at the same time the said directors caused to be issued to themselves 8 shares of the stock of The Mercer Mining and Manufacturing Company of the par value of $400.00 for each thousand dollars of said bonds so issued to them without any payment or consideration whatever for said stock other than the purchase of said bonds at such reduced rates.

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That many of the bonds so issued are still held and claimed to be owned by the persons to whom they were originally issued.

The holders of bonds under the mortgage of which this respondent is trustee claim and demand that this respondent shall insist that the bonds so issued by said directors as aforesaid to themselves are not valid liens, and are not entitled to be paid out of the proceeds of the sale of the mortgaged property in priority to the second-mortgage bonds, and this respondent claims and insists that due proof may be made of the manner of sale and issuing of the bonds under the said mortgage of which petitioner is trustee, to the end that the question of their validity and priority may be properly determined.

Ninth. This respondent further shows to the court that since the execution of the mortgage of which petitioner is trustee there has been constructed by the said Shenango and Allegheny Railroad Company 17 miles of railroad, main line and branches, upon which said mortgage is not a lien, but that the mortgage of which this respondent is trustee is a lien thereon.

484

The Shenango and Allegheny Railroad Company paid the indebtedness incurred by it in constructing said 17 miles of railroad in

bonds and proceeds of bonds which were secured by its said mortgage to this respondent, as trustee. Such newly constructed road and branches are used and operated in connection with that part of the road upon which the petitioner's mortgage is a lien, and each portion is much more valuable when thus used in connection than it would be used by itself.

And this respondent shows, on his information and belief, that the whole road sold together would bring a much larger price than if sold in the two parts covered by the respective mortgages.

Wherefore this respondent suggests to the court that the prayer of the petitioner be denied, and that, by proper proceedings for that purpose, it may be ascertained and determined what part of the property of the Shenango and Allegheny Railroad Company is covered by the mortgage of which petitioner is trustee, and what amount, if any, is equitably due to the holders of the bonds under such mortgage.

JOHN H. DEVEREUX, *Trustee.*

485 STATE OF NEW YORK, }
City and County of New York, } *ss:*

John H. Devereux, being duly sworn according to law, deposes and says that he is the respondent mentioned in the foregoing answer; that the facts set forth in the foregoing answer, so far as the same are stated on this deponent's knowledge, are true, and so far as the same are stated on information and belief are believed by him to be true.

JOHN H. DEVEREUX.

Sworn to and subscribed before me, a notary public in and for the said city and county, this 26th day of June, A. D. 1885.

JNO. M. SHEDD,
Notary Public, N. Y. Co.

486 *Answer of John H. Devereux, Trustee, to Petition of Henry Rawle, Trustee.*

Circuit Court United States, Western Dist. of Pennsylvania. May Term, 1884.

YOUNG *et al.*
vs. } No. 17.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY.

Dunning, Edsall & Hart, atty's for John H. Devereux, trustee. Filed June 30th, 1885.

H. D. GAMBLE, *Clerk.*

487 Circuit Court of the United States, Western District of Pennsylvania. March Term, 1884.

YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

The answer of Charles Morrison to the petition of Henry Rawle, trustee, heretofore filed, respectfully showeth as follows:

1. This respondent is one of the *cestuis que trustent* under the mortgage in which the said Henry Rawle is trustee, this respondent being the owner of bonds secured by the said mortgage to an amount of one hundred and eighty-two thousand five hundred dollars.

2. This respondent is informed and believes that the Shenango and Allegheny railroad consists of a line of railway within the State of Pennsylvania, extending from Greenville, Mercer county, at the junction of the New York, Pennsylvania and Ohio railroad
488 with the Erie and Pittsburgh railroad to Hilliard's, in Butler county, a distance of forty-seven miles, and that the company also operates and partly owns the following branches:

South branch and sidings	5.1	miles
Bull Valley branch and sidings	3.2	"
Coalton branch and sidings	3.2	"
Filer and Reed branches, partly owned by the company	3.9	"
Sidings	10.7	"
Butler extension	22	"
Making a total of	95	miles

of railroad operated, 69 miles of which are, as this respondent is informed and believes, wholly owned by the Shenango and Allegheny Railroad Company, and 3.9 miles of which are partly owned by the said company, together with the Butler Extension or West Penn. and Shenango Connecting railroad. Of the foregoing line or lines of railway, a portion only, viz., something more than 40 miles, is covered by the mortgage which is given to secure (*inter alia*) bonds of this respondent, but the exact extent of the portion thus covered this respondent is unable to state.

The said railroad company is also interested in certain coal property, the particulars of which this respondent is unable to state, but as to which he claims leave to refer to the reports of the receiver, Thomas P. Fowler, Esq., heretofore filed in this cause.

489 This respondent is advised and believes and shows to the court that the value of the property aforesaid is dependent upon its being held and operated and used as a whole, and that the sale of a portion of the road would be highly disadvantageous, and would be calculated to imperil the security enjoyed by the respondent's bonds, and this respondent has been credibly informed that a sale of that portion of the railroad covered by the first mortgage alone, and independently of the other portions of the said railroad and branches and connections and other property, would not bring

a price sufficient to pay the mortgage debt, principal and interest, with the costs and prior charges or liens, if any; whereas a sale of the aforesaid property as a whole would be much more likely to and probably would result in realizing a fund sufficient to pay the principal and interest of the said mortgage debt and the said costs, charges, and liens.

3. This respondent is informed and believes, and so avers, that various questions have arisen as to the rights of incumbrances and parties claiming to have liens and charges against the said railroad and its connections. The principal of the said claims are believed by this respondent to be as follows:

Receiver's certificates	$135,000	
Claims for which a further issue of receiver's certificates has been asked	11,000	
Amount alleged to be due upon the first mortgage bonds of the Shenango and Allegheny	1,000,000	
Do. do. second issue	290,000	
Interest on the above	153,326	10
Car-trust obligations	71,869	95

It is claimed on behalf of the mortgage bonds of the second issue that a portion of the road is not covered by the bonds of the first issue, and it is claimed by the holders of the receiver's certificates that they are entitled to priority as against the entire road and its connections over all other encumbrances, and it is entitled to priority as against a portion of the rolling-stock, and possibly as against the *corpus* of the property.

Under these circumstances this respondent shows to the court that it would be highly inexpedient to authorize or permit a sale of the property covered by the first mortgage until the exact extent of that property is determined, and until the exact nature and order of priority of the said liens and charges and encumbrances shall be settled. Until the extent of the property covered by the mortgage shall have been determined, and until the order of priority of liens or alleged liens and the amounts thereof shall have been ascertained, it will be impossible for the respondent to properly protect his interests at any such sale, and the uncertainty which would
491 exist were a sale allowed to take place without such ascertainment of liens and their priority would have an injurious effect upon the bidding, and would tend to depreciate the price which might be realized at the sale.

4. And this respondent, further answering the petition of the said Henry Rawle, says that he has read what purports to be a copy of the same, which has been furnished to his counsel by the counsel for the said trustee, and that as to the allegations therein contained he believes and answers as follows:

This respondent believes that a bill in equity was filed and a receiver appointed, as stated in the first paragraph of the petition, and that the averments contained in the second paragraph of the petition are correct, save that the branches and extensions of the said rail-

road are believed to be as hereinbefore stated by this respondent, and save that this respondent has no knowledge as to the age or value of the locomotives and cars which the company owns.

5. This respondent believes that a mortgage or deed of trust was duly executed, as stated in the third paragraph of the petition, but for greater certainty prays that the averments as to the terms thereof contained in the said third paragraph and in the fourth paragraph of the petition be duly proved by the production of the original of the said mortgage or of a duly certified copy of the same, or otherwise, as the court may direct.

492 6. As to the averments contained in the fifth and sixth paragraphs of the petition, this respondent respectfully asks that the same be duly proved, and that the nature and extent of the liens and incumbrances mentioned therein, and whether the said mortgage is now a valid first lien upon the properties in the said petition mentioned, may be judicially ascertained, this respondent showing to the court that, in addition to the questions hereinbefore set forth, he is informed and believes that further questions as to the amount due upon the bonds secured by the said mortgage and as to the nature and extent of the liens of the said mortgage will be raised by subsequent incumbrances.

7. This respondent believes that prior to the appointment of the receiver the railroad company did default — times in the payment of its interest, as stated in the seventh paragraph of the petition, and that there is now remaining unpaid the interest on the said bonds which fell due on the first day of October, 1884, and on the first day of April, 1885; and, as to the averments contained in the eighth, ninth, and tenth paragraphs of the said petition, this respondent prays that due proof of the said averments may be made to the court.

8. This respondent is advised by his counsel that it is not the duty of the trustee under the said mortgage to proceed under the
493 written request served upon him (if any such request has been served) and to sell the mortgaged property, unless and until the ascertainment of liens and incumbrances hereinbefore referred to and the settlement of the amounts due upon the said mortgage shall have taken place; and this respondent respectfully shows to the court that it will be injurious to the interests of this respondent and of all parties concerned if any such order as is prayed for in the said petition should be made until such ascertainment and settlement shall have taken place.

Wherefore this respondent respectfully suggests and prays that the application of the said Henry Rawle, trustee, be referred to a master, before whom proof of the facts stated in the said petition and on the hearing admitted may be made, and by whom, under directions of the court, the extent of the property covered by the said mortgage, the amount due upon the bonds secured thereby, the nature, extent, and order of priority of other incumbrances, and such other matters as may be necessary to secure a just and fair sale for the protection of the interests of this respondent may be reported.

C. MORRISON

Sworn at the consulate general of the United States of America at London this 11th day of July, 1885, before me, P. Hewitt, a commissioner to administer oaths in the supreme court of judicature in England.

——— ———.

494 Charles Morrison, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer, so far as the same are stated of his own knowledge, are true, and so far as the same are stated on information and belief are believed by him to be true.

——— ———.

Sworn and subscribed to before me this 11th day of July, A. D. 1885.

T. HEWITT,
A Commissioner to Administer Oaths in the Supreme Court of Judicature in England.

495 Consulate General of the United States of America for Great Britain & Ireland at London.

I, Thomas M. Waller, consul general and notary public *ex officio* of the United States of America at London, England, do hereby make known and certify to all whom it may concern that Thomas Hewitt, before whom the annexed affidavit of Charles Morrison was made, as appears by his signature thereto, is a commissioner to administer oaths in the supreme court of judicature in England, practising in the city of London, duly commissioned and authorized to receive affidavits, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at London aforesaid, this 11th day of July, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] THOMAS M. WALLER,
Consul General.

496 *Answer of Charles Morrison to Petition of Henry Raule, Trustee.*

Circuit Court of the United States, Western Dist. of Penna. M'ch Term, 1884.

YOUNG *et al.*
vs.
SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Filed July 24, 1885.

——— ———.

GEO. TUCKER,
For Respondent.

497 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

CHARLES L. YOUNG and HENRY W. TYLER
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

To the honorable the judges of said court:

The First National Bank of Greenville, Pennsylvania, to whom your honorable court granted leave to intervene and defend *pro inter esse suo* in the above-entitled cause, in answer to the petition of Henry Rawle, trustee, filed in this cause, asking and praying your honorable court to grant him, the said petitioner, authority and permission to take possession of the Shenango and Allegheny Railroad Company's property and franchises under the mortgage in said petition mentioned, and to proceed and sell the said railroad and the property and franchises thereof in accordance with the terms in said mortgage mentioned, would respectfully show—

That this respondent admits the facts set forth in the first section of the said petition.

II. That this respondent admits the facts set forth in the
498 second section of said petition, with the following qualifications, viz: That under its original charter the Shenango and Allegheny Railroad Company had no power or authority to extend its western terminus beyond the junction of its railroad with the Erie and Pittsburgh Railroad at the point now called Shenango, in Mercer county, and had no authority to construct branches; that the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania approved the 14th day of April, A. D. 1870, P. L., 1871, page 1516.

That the authority under which it constructed several branches was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania approved the 7th day of March, A. D. 1872, P. L., 1873; page 1012; and all branches and extensions of said railroad mentioned in the second section of said petition were constructed under and by virtue of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of Assembly.

III. That this respondent admits the facts set forth in the third section of said petition except that, for want of knowledge, it denies that true and exact copies of said bonds and the form of coupons or interest warrants thereto annexed, and also a true and exact copy of said mortgage, are annexed thereto.

IV. That this respondent denies the facts alleged in the
499 fourth and fifth sections of the said petition, as therein stated and set forth, and alleges that the said defendant company never authorized the execution of any mortgage which would cover any of the extensions of the main line of its railroad beyond the points contemplated, mentioned, and described in its original charter, and said company never authorized the execution of a mortgage to

Henry Rawle, trustee, the petitioner to cover the several branches of the railroad afterwards constructed by it.

That the resolution of the defendant company under and by virtue of which the mortgage mentioned in said petition was executed, so far as the same relates to the said mortgage, was in the following words, viz:

"All of which said bonds shall be secured by a deed of trust or mortgage to be executed and delivered to Henry Rawle, of Erie, as trustee, in trust, and which deed of trust or mortgage shall convey the main line of the Shenango and Allegheny railroad, now partly constructed and to be hereafter constructed, between the western terminus thereof, in the county of Mercer, at its junction with the Erie and Pittsburgh railroad, and a point in Butler county, on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, and rolling-stock and things belonging to the company."

V. That so far as the said mortgage purports to cover more
500 of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited, the same was executed without authority, was never authorized by the said defendant company, and is void.

That the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized to construct a railroad.

That the main line of said defendant company's railroad as extended since the execution of the said mortgage to Henry Rawle, trustee, under and by virtue of the acts of assembly hereinbefore mentioned, extends from Greenville, in Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said main line on the northwest are extensions of said original main line constructed under and by virtue of the authority conferred upon said company by the aforesaid acts of assembly.

That there are numerous branches and sidings of said railroad, some connected with the original forty miles, and some with the extensions at the two ends of said road above mentioned, said branches being constructed by virtue of the power conferred by the aforesaid acts of assembly amending the original act incorporating said defendant company; and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

501 That so far, if at all, as the officers of said railroad company undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was entirely without authority, of which want of authority said trustee, and each and every of the holders of said bonds, had notice, the same appearing on the face of said bonds and of said mortgage.

That at the time said mortgage was made, to wit, April 1, 1869, the said company making the same had corporate power and authority to construct only the forty miles of said railroad covered

as aforesaid by said mortgage, and only acquired the corporate power to construct further extensions and branches thereof by the acts of assembly hereinbefore mentioned.

VI. That the respondent is advised by counsel and believes that the mortgage mentioned in the said petition, and known and hereinafter referred to as the first mortgage, is not a lien on the extensions and branches hereinbefore mentioned, but is a lien only upon forty miles of the main line of said railroad; that said first mortgage, so far as it purports to convey or cover more than the forty miles of the main line hereinbefore mentioned, and its appurtenances, equipments, rolling-stock, and things belonging to the company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority
502 to mortgage the extensions and branches of said defendant company by the said first mortgage.

VII. That by a deed of trust or mortgage, dated July 1st, 1877, the corporation defendant conveyed to John H. Devereux, trustee, all its property and franchises then existing, or thereafter to be acquired, to secure bonds in the sum of one million dollars, of which said bonds there have been issued and are now outstanding about four hundred thousand dollars, which said mortgage is known and is hereinafter designated as the second mortgage.

VIII. That the respondent is advised and believes that the said second mortgage is a first lien upon all the extensions and branches built by the said defendant corporation hereinbefore mentioned, which are not covered by the lien of the said first mortgage, mentioned in the petition of Henry Rawle, trustee.

That the respondent is a holder of twenty-two thousand dollars of the bonds secured by said second mortgage, and is interested in the extent of its lien, and is also the holder of unpaid coupons or interest warrants of bonds secured by said first mortgage to the amount of five thousand two hundred and eighty-five dollars.

And the respondent respectfully represents that if the prop-
503 erty of the defendant company is sold by the trustee in said first mortgage under the powers therein contained, and before the validity and extent of the said first mortgage is judicially determined, building will be deterred on account of the risk and the uncertainty, and the property will be in great danger of being sacrificed at said sale.

The respondent would respectfully pray that the prayer of said petition be refused, and that your honorable court will permit said property to be sold only by virtue of and under a decree of a court of competent jurisdiction to determine the extent, validity, and respective priorities of the liens of the two mortgages hereinbefore mentioned.

IX. That this respondent is advised, believes, and expects to be able to prove that many of the bondholders under the said first mortgage mentioned in section eight of the petition hereinbefore mentioned are not *bona fide* holders for value of the bonds they now possess, and that justly and equitably the said bonds are paid; that some

of the holders of said bonds were at the time they obtained the same officers and directors of the defendant company, and sold the said bonds to themselves at a very large discount, and being at less than their real value and on more favorable terms than they were given to the general public; that on part of the bonds so sold to themselves they allowed themselves a discount of forty per cent., and on the balance so sold they allowed themselves a discount of twenty per cent., and in addition they gave themselves Mercer
504 Mining and Manufacturing Company stock to the amount of forty per cent. of the bonds so sold to themselves.

And this respondent is further advised, believes, and expects to be able to prove that the holders of said bonds, who were officers of said defendant company at the time they obtained the same, have been paid their original investment in full, with interest thereon at the rate of seven per cent. per annum, and about three hundred dollars more upon each one thousand dollars so invested, and that it is advised by counsel that in law and equity the said bonds are paid, and that the holders thereof are entitled to receive nothing more thereon.

X. That the respondent for want of knowledge denies the facts set forth in the eighth section of said petition, but, on the contrary, alleges that it is informed and believes and expects to be able to prove that many of the alleged owners and holders of said bonds who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage are not the *bona fide* holders for value of the bonds held by them, and that many of said alleged bonds are paid.

Your respondent is also advised by counsel and believes that it is necessary, in order to protect its rights as a subsequent lien creditor, to have a decree of a court of competent jurisdiction to determine the amount of bonds due and unpaid which are secured
505 by said first mortgage before any sale of the property is made.

The respondent would therefore pray that your honorable court will refuse the prayer of the petition of Henry Rawle, trustee as aforesaid, and permit the property of the defendant company to be sold only under the decree of a court of competent jurisdiction to determine the various questions of controversy hereinbefore mentioned.

THE FIRST NAT'L BANK
OF GREENVILLE, PA.,
[SEAL.] By W. WAUGH, *Pres.*

STATE OF PENNSYLVANIA, }
County of Mercer, } *ss:*

C. R. Beatty, being duly sworn according to law, doth depose and say that he is the cashier of the First National Bank of Greenville, Penna., the respondent above named; that the facts set forth in the foregoing answer, so far as stated from his own knowledge, are true, and so far as stated from information and belief he believes the same to be true.

C. R. BEATTY.

Sworn to and subscribed before me this 25th day of July, A. D. 1885.

[SEAL.] RALPH MAXWELL,
Notary Public.

506 *Answer of the First National Bank of Greenville, Pa., to Petition of Henry Rawle, Trustee, for Order of Sale, etc.*

May Term, 1884.

CHARLES L. YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Filed July 27, 1885.

J. B. BRANLEY.

507 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

CHARLES L. YOUNG and HENRY W. TYLER, Citizens of Great Britain,
versus
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation Incorporated and doing Business Under the Laws of the State of Pennsylvania. } No. 17.

To the honorable the judges of said court:

The First National Bank of Cleveland, Ohio, to whom your honorable court — *pro inter esse suo* in the above-entitled cause, in answer to the petition of Henry Rawle, trustee, filed in this cause, asking and praying your honorable court to grant him, the said petitioner, authority and permission to take possession of the Shenango and Allegheny Railroad Company's property and franchises under the mortgage in said petition mentioned, and to proceed and sell the said railroad and the property and franchises thereof in accordance with the terms in said mortgage mentioned, would respectfully show:

508 I. The respondent admits the facts set forth in the first section of said petition.

II. The respondent admits the facts as set forth in the second section of said petition with the following qualifications. The Shenango and Allegheny Railroad Company had no power or authority to extend its western terminus beyond the junction of its railroad with the Erie and Pittsburgh railroad at the point now called Shenango, and had no authority to construct branches.

That the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania approved the 14th day of April, A. D. 1870, P. L., 1871, page 1516.

That the authority under which it constructed several branches was conferred upon it by virtue of an act of the Commonwealth of

Pennsylvania approved the 7th day of March, A. D. 1872, P. L., 1873, page 1012; and all branches and extensions of said railroad mentioned in section second of said petition were constructed under and by virtue of the rights, powers, and franchises conferred upon said railroad company by the above-mentioned acts of Assembly.

III. This respondent admits the facts set forth in the third section of said petition except that, for want of knowledge, it denies that true and exact copies of said bonds and the form of coupon or interest warrants thereto annexed and of said mortgage are annexed thereto.

509 IV. The respondent denies the facts alleged in the fourth and fifth sections of the said petition as therein stated and set forth, and alleges that the said defendant company never authorized the execution to said Henry Rawle, petitioner, of any mortgage which would cover, nor does the same purport to cover, any of the extensions of the main line of its railroad beyond the point contemplated, mentioned, and described in its original charter, and said company never authorized the execution of a mortgage to Henry Rawle, the petitioner, to cover the several branches of the railroad afterwards constructed by it.

That the resolution of the defendant company under and by virtue of which the mortgage mentioned in said petition was executed, so far as the same relates to the said mortgage, was in the following words, viz: * * * "All of which said bonds shall be secured by a deed of trust or mortgage to be executed and delivered to Henry Rawle, of Erie, as trustee, in trust, and which deed of trust or mortgage shall convey the main line of the Shenango and Allegheny railroad, now partly constructed and to be hereafter constructed, between the western terminus thereof in the county of Mercer, at its junction with the Erie and Pittsburgh railroad, and a point in Butler county, on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, and rolling-stock and things belonging to the company."

V. That so far as the said mortgage purports to cover more
510 of the defendant company's railroad, its property and franchises, than are mentioned in so much of the aforesaid resolution as is herein recited, the same was executed without authority, was never authorized by the said defendant company, and is void; that the said defendant company had in law no power or authority to execute a mortgage upon any property or franchises beyond the points between which it was authorized by law and its charter to construct a railroad; that the main line of said defendant company's railroad, as extended since the execution of the said mortgage to Henry Rawle, trustee, under and by virtue of the acts of Assembly hereinbefore mentioned, extends from Greenville, in Mercer county, southeastwardly a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said main line on the northwest are extensions of said original main line, constructed under and by virtue of the authority conferred upon said company by the aforesaid acts of Assembly; that there are numerous branches and sidings of said railroad, some connected with the

original forty miles and some with the extensions at the two ends of said road above mentioned, said branches being constructed by virtue of power given by the aforesaid acts of Assembly amending the original act incorporating said defendant company; and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

This petitioner says that so far, if at all, as the officers
511 of said railroad undertook to convey to said Henry Rawle, trustee, any branches, sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was entirely without authority, of which want of authority said trustee and each and every of the holders of said bonds had notice, the same appearing on the face of said bonds and of said mortgage.

VI. It denies in the fifth clause that said mortgage is a first lien upon said railroad, its properties, side tracks, branches, and franchises, to any greater extent than already set forth or to secure the payment of said bonds aggregating one million dollars, but it says that said bonds aggregate a much less sum. It denies that it is said in said mortgage it ever provided that the trustee should sell the whole of said property, but only so much of that mortgaged as should be necessary to pay the interest overdue and unpaid, and says that by the terms of said mortgage said trustee was only to enforce the rights of the bondholders only on the request in writing of three hundred thousand dollars in amount thereof. For want of knowledge it denies that according to the condition of said mortgage said railroad company did default in said first mortgage before the appointment of the receiver herein as alleged in clause

VII. The respondent is advised by counsel and believes that the mortgage mentioned in the said petition and known and here-
512 inafter designated as the first mortgage is not a lien on the extensions and branches hereinbefore mentioned, but is a lien upon only forty miles of the main line of said railroad; that said first mortgage, so far as it purports to convey or cover more than the forty miles of the main line hereinbefore mentioned and its appurtenances, equipments, rolling-stock, and things belonging to said company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches of said defendant company by the said first mortgage.

VIII. That by a deed of trust or mortgage dated July 1st, 1877, the corporation defendant conveyed to John H. Devereux, trustee, all its property and franchises then existing or thereafter to be acquired to secure bonds in the sum of one million dollars, of which said bonds there have been issued and are now outstanding about four hundred thousand dollars, which said mortgage is known as and hereinafter designated the second mortgage, and was immediately after its execution duly recorded in said counties of Mercer and Butler.

IX. That the respondent is advised and believes that the said second mortgage is a first lien upon all the extensions and

branches built by the said defendant corporation hereinbefore
513 mentioned which are not covered by the lien of the said first mortgage, mentioned in the petition of Henry Rawle, trustee; that the respondent is a holder of bonds secured by said second mortgage, and is interested in the extent of its lien; and the respondent respectfully represents that if the property of the defendant company is sold by the trustee in said first mortgage under the powers therein contained, and before the validity and extent of said first mortgage is judicially determined, bidding will be deterred on account of the risk and uncertainty, and the property will be in great danger of being sacrificed at said sale.

X. That your respondent is advised and believes, and expects to be able to prove, that many of the bondholders under the said first mortgage mentioned in section eight of the petition hereinbefore mentioned are not *bona fide* holders for value of the bonds they now possess, and that justly and equitably the said bonds are paid; that some of the holders of said bonds were, at the time they obtained the same, officers and directors of the defendant company and sold the said bonds to themselves at a very large discount, and being at much less than their real value and on more favorable terms than they were given to the general public; that on part of the bonds so sold to themselves — a discount of forty per cent., and on the balance so sold they allowed themselves a discount of twenty per cent., and in addition they gave themselves Mercer Mining and
514 Manufacturing Company stock to the amount of forty per cent. of the bonds so sold to themselves.

And the respondent is further advised and believes, and expects to be able to prove, that the holders of said bonds who were officers of said defendant company at the time they obtained the same have been paid their original investment in full, with interest thereon at the rate of seven per cent. per annum, and about three hundred dollars more upon each one thousand dollars so invested; and that it is advised that in law and equity the said bonds are paid and that the holders thereof are entitled to receive nothing more thereon.

That the respondent, for want of knowledge, denies the facts set forth in the eighth section of said petition, and, on the contrary, alleges that it is informed and believes and expects to be able to prove that many of the alleged owners and holders of said bonds who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage are not the *bona fide* holders for value of the bonds held by them, and that many of said alleged bonds are paid.

The said The First National Bank of Cleveland says that it is the owner and holder in the manner as hereinafter stated of the following bonds of the Shenango and Allegheny Railroad Company, all duly made, executed, and delivered by said railroad company, to wit, sixty-four bonds, each for the sum of one thousand
515 dollars, and dated July 1st, 1877, payably thirty years thereafter, with interest at seven per cent., payable semi-annually; to each and every of said bonds *is* attached coupons or interest warrants covering each and every installment of interest to become due

thereon. Said bonds are numbered thirteen hundred and fifteen to thirteen hundred and thirty-four, inclusive, fourteen hundred and fifty-six to fourteen hundred and ninety-six, inclusive, and fifteen hundred and two to fifteen hundred and four, inclusive. The following coupons are overdue on said bonds, and in default for want of payment, to wit: Those due January 1st, 1878, and those due each six months thereafter, until the present time—and all secured by said mortgage dated July 1st, 1877, subject by the terms of said mortgage only to a first mortgage upon forty miles of the main line thereof, and no more; that it is provided in and by said mortgage that the same shall be in default if any of the coupons remain overdue more than thirty days, and that on foreclosure of said mortgage the proceeds of the property mortgaged shall be used to pay ratably, first, all overdue interest on said bonds, and, next, the principal thereof.

That the said First National Bank of Cleveland holds the said bonds so secured as aforesaid to secure the payment of certain promissory notes of the Shenango and Allegheny Railroad Company, hereinafter fully set forth; that the Shenango and Allegheny Railroad Company made and delivered two promissory notes
516 owned and held by this First National Bank of Cleveland, both payable to and endorsed by the Mercer Mining and Manufacturing Company, both payable sixty days after the date thereof, one for twenty-five thousand dollars, dated the 18th day of February, 1884, and the other for five thousand dollars, dated the 23d day of February, 1884; that there is due to said respondent, The First National Bank of Cleveland, from the Shenango and Allegheny Railroad Company, upon said two notes, the sum of thirty thousand dollars, with interest on five thousand dollars from the —st day of June, A. D., 1885, and on twenty-five thousand dollars from the —th day of June, A. D. 1885, and that the petitioner is entitled to receive from the proceeds of said road the interest and principal of said bonds ratably and in proportion with all the other holders thereof until its said debt is entirely paid.

Your respondent is also advised by counsel and believes that it is necessary, in order to protect its rights as a lien creditor, to have a court of competent jurisdiction to determine the amount of bonds due and unpaid which are secured by said first mortgage before any sale of the property is made. The respondent would therefore pray that your honorable court will refuse the prayer of the petition of Henry Rawle, trustee, as aforesaid, and permit the property of the defendant company to be sold only under the decree of a court of competent jurisdiction to determine the various questions of controversy hereinbefore mentioned.

THE FIRST NATIONAL BANK
OF CLEVELAND,
By J. B. BRAWLEY, *Solicitor.*

517 STATE OF OHIO, }
County of Cuyahoga, } ss:

Henry S. Whittlesey, being duly sworn according to law, doth depose and say that he is the cashier of the First National Bank of Cleveland, Ohio; that the facts set forth in the above and foregoing answer, so far as the same are stated upon his own knowledge, are true, and, so far as the same are stated upon information and belief, he believes the same to be true.

HENRY S. WHITTLESEY.

Sworn to before me and subscribed in my presence by said Whittlesey, this 25th day of July, A. D., 1885.

[SEAL.] H. CLARK FORD,
Notary Public in and for Cuyahoga County, Ohio.

518 *Answer of The First National Bank of Cleveland to the Petition of Henry Rawle, Trustee.*

May Term, 1884.

CHARLES L. YOUNG *et al.* }
vs. } No. 17.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY *et al.* }

Filed July 27, 1885.

J. B. BRAWLEY, *Solicitor.*

519 In the Circuit Court of the United States for the Western District of Pennsylvania. May Tr., 1884. In Equity.

CHARLES L. YOUNG and HENRY W. TYLER, Citizens of Great Britain,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY, a Corporation Incorporated and Doing Business under the Laws of Pennsylvania. } No. 17.

To the honorable the judges of said court:

The Second National Bank of Erie, Pennsylvania, to whom your honorable court granted leave to intervene and defend *pro interesse suo* in the above-entitled cause, in answer to the petition of Henry Rawle, trustee, filed in this cause asking and praying your honorable court to grant him, the said petitioner, authority and permission to take possession of the Shenango and Allegheny Railroad Company's property and franchises under the mortgage in said petition mentioned, and to proceed and sell the said railroad, and the property and franchises thereof, in accordance with the terms in said mortgage mentioned, would respectfully show—

1. That this respondent admits the facts set forth in the first section of the petition.

520 2. That this respondent admits the facts set forth in the second section of said petition, with the following qualifications, viz., that under its original charter the Shenango and Allegheny Railroad Company had no power or authority to extend its western terminus beyond the junction of its railroad with the Erie and Pittsburgh railroad at the point now called Shenango, in Mercer county, and had no authority to construct branches.

That the authority to extend its western terminus beyond that point was conferred upon it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 14th day of April, A. D. 1870, P. L. 1871, page 1516.

That the authority under which it constructed several branches was conferred on it by virtue of an act of Assembly of the Commonwealth of Pennsylvania, approved the 7th day of March, A. D. 1873, P. L. 1873, page 1012, and all branches and extensions of said railroad mentioned in the second section of said petition were constructed under and by virtue of the rights, powers, and franchises conferred upon said railroad company by above-mentioned acts of Assembly.

3. That this respondent admits the facts set forth in the third section of said petition, except that for want of knowledge it denies that true and exact copies of said bonds and the form of coupons or interest warrants thereto annexed, and also a true and exact copy of said mortgage, are annexed thereto.

521 4. That this respondent denies the facts alleged in the fourth and fifth sections of the said petition, as therein stated and set forth, and alleges that the said defendant company never authorized the execution of any mortgage which would cover any of the extensions of the main line of its railroad beyond the points contemplated, mentioned, and described in its original charter; and said company never authorized the execution of a mortgage to Henry Rawle, the petitioner, to cover the several branches of the railroad afterwards constructed by it; that the resolution of the defendant company, under and by virtue of which the mortgage mentioned in said petition was executed, so far as the same relates to the said mortgage, was in the following words, viz: * * * * "All of which said bonds shall be secured by a deed of trust or mortgage, to be executed and delivered to Henry Rawle, of Erie, as trustee, in trust, and which deed of trust or mortgage shall convey the main line of the Shenango and Allegheny railroad, now partly constructed, and to be hereafter constructed, between the western terminus thereof, in the county of Mercer, at its junction with the Erie and Pittsburgh railroad at a point in Butler county, on said railroad, forty miles southeastwardly from said western terminus, and all its appurtenances, equipments, and rolling-stock, and things belonging to the company."

5. That so far as the said mortgage purports to cover more of the defendant company's railroad, its property and franchises, than

522 are mentioned in so much of the aforesaid resolution as is herein recited, the same was executed without authority, was never authorized by the said defendant company, and is void, and said company had, in law, no power or authority to execute a mort-

gage upon any property or franchises beyond the points between which it was authorized to construct a railroad.

That the main line of said defendant company's railroad, as extended since the execution of the said mortgage to Henry Rawle, trustee, under and by virtue of the acts of Assembly hereinbefore mentioned, extends from Greenville, in Mercer county, southeastwardly, a distance of about forty-seven miles, five miles of which said main line on the southeast and two miles of said main line on the northwest are extensions of said original main line, constructed under and by virtue of the authority conferred upon the said company by the aforesaid acts of Assembly.

That there are numerous branches and sidings of said railroad, some connected with the original forty miles and some with the extensions at the two ends of said road above mentioned, said branches being constructed by virtue of the power conferred by the aforesaid acts of Assembly amending the original act incorporating said defendant company, and the branches, sidings, and main line of said railroad now comprise about seventy miles of track.

That so far, if at all, as the officers of said railroad company undertook to convey to said Henry Rawle, trustee, any branches,
523 sidings, or extensions of said railroad, save forty miles of the main line thereof, the same was entirely without authority, said trustee, and each and every of the holders of said bonds, had notice of such want of authority, the same appearing on the face of said bonds and of said mortgage.

That at the time said mortgage was made, to wit, April 1, 1869, the said company making the same had corporate power and authority to construct only the forty miles of said railroad covered as aforesaid by said mortgage, and only acquired the corporate power to construct further extensions and branches thereof by the acts of Assembly hereinbefore mentioned.

6. That the respondent is advised by counsel and believes that the mortgage mentioned in the said petition, and known and hereinafter referred to as the first mortgage, is not a lien on the extensions and branches hereinbefore mentioned, but is a lien only upon forty miles of the main line of said railroad.

That said first mortgage, so far as it purports to convey or cover more than the forty miles of the main line hereinbefore mentioned, and its appurtenances, equipments, rolling-stock, and things belonging to the company at the date of the execution of said mortgage, was not authorized by the stockholders or directors of said company, and is therefore void; that the president and secretary of said company had no authority to mortgage the extensions and branches of said defendant company by the said first mortgage.

7. That by a deed of trust or mortgage dated July 1st, 1877, the corporation defendant conveyed to John H. Devereux, trus-
524 tee, all its property and franchises then existing or thereafter to be acquired to secure bonds in the sum of one million dollars, of which said bonds there have been issued and are now outstanding about four hundred thousand dollars, which said mortgage is known and hereinafter designated as the second mortgage.

8. That the respondent is advised and believes that the said second mortgage is a first lien upon all the extensions and branches, built by the said defendant corporation hereinbefore mentioned, which are not covered by the lien of the said first mortgage mentioned in the petition of Henry Rawle, trustee.

That the respondent is a holder of bonds secured by said second mortgage, and is interested in the extent of its lien; and your respondent respectfully represents that if the defendant company's property is sold by the trustee in said first mortgage under the powers therein contained, and before the validity and extent of said first mortgage is judicially determined, bidding will be deterred on account of the risk and uncertainty and the property will be in great danger of being sacrificed at said sale.

The respondent would respectfully pray that the prayer of said petition be refused, and that your honorable court will permit said property to be sold only by virtue of and under a decree of a court of competent jurisdiction, to determine the extent, validity, and respective priorities of the liens of the two mortgages hereinbefore mentioned.

525 9. That this respondent is advised and believes and expects to be able to prove that many of the bondholders under the said first mortgage, mentioned in section eight of the petition hereinbefore mentioned, are not *bona fide* holders for value of the bonds they now possess, and that justly and equitably the said bonds are paid; that some of the holders of said bonds were at the time they obtained the same officers and directors of the defendant company and sold the said bonds to themselves at a very large discount and being at less than their real value and on more favorable terms than they were given to the general public.

That on part of the bonds so sold to themselves they allowed themselves a discount of forty per cent. and on the balance so sold they allowed themselves a discount of twenty per cent.; and in addition they gave themselves Mercer mining and manufacturing stock to the amount of forty per cent. of the bonds so sold to themselves; and this respondent is further advised and believes and expects to be able to prove that the holders of said bonds, who were officers of said defendant company at the time they obtained the same, have been paid their original investment in full, with the interest thereon at the rate of seven per cent. per annum, and about three hundred more upon each one thousand dollars so invested, and that it is advised by counsel that in law and equity the said bonds are paid, and that the holders thereof are entitled to receive nothing more thereon.

526 That the respondent, for want of knowledge, denies the facts set forth in the eighth section of said petition, and on the contrary alleges that it is informed and believes, and expects to be able to prove, that many of the alleged owners and holders of said bonds who presented their written request to Henry Rawle, trustee, to proceed and sell the said mortgaged property under the terms of said mortgage, are not the *bona fide* holders for the value of the bonds held by them, and that many of said alleged bonds are paid.

Your respondent is also advised by counsel and believes that it is necessary, in order to protect its rights as a subsequent lien creditor, to have a decree of a court of competent jurisdiction to determine the amount of bonds due and unpaid which are secured by said first mortgage before any sale of the property is made.

The respondent would therefore pray that your honorable court will refuse the prayer of the petition of Henry Rawle, trustee as aforesaid, and permit the property of the defendant company to be sold only under the decree of a court of competent jurisdiction to determine the various questions in controversy hereinbefore mentioned.

JOSEPH McCARTER.

527 STATE OF PENNSYLVANIA, } ss:
County of Erie, }

Joseph McCarter, being duly sworn according to law, doth depose and say that he is the president of the Second National Bank of Erie, Pennsylvania; that the facts contained in the foregoing answer, so far as the same are stated from his own knowledge, are true, and, so far as stated from information and belief, he believes them to be true.

Sworn to and subscribed before me this 28th day of July, A. D. 1885.

JNO. W. SHANNON,
Notary Public.

528 *Answer of the Second Nat'l Bank of Erie, Pa., to Petition of Henry Rawle, Trustee, for Order to Sell, &c.*

May Tr., 1884.

CHAS. L. YOUNG *et al.*
vs. } No. 17.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY.

Filed July 29, 1885.

BRAWLEY.

529 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884.

CHARLES L. YOUNG and HENRY W. TYLER
vs. } No. 17.
THE SHENANGO & ALLEGHENY RAILROAD COMPANY,

The demurrer of James J. Shryock, a defendant in said case, to the bill of complaint of Charles L. Young and Henry W. Tyler.

The said defendant, Shryock, by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill contained to be true in such manner and form as the same are therein set forth and alleged, does demur in law to said bill, and for cause of demurrer showeth that the said complainants

have not in and by their said bill made or stated such a case as does or ought to entitle them in a court of equity to any such relief as is thereby sought and prayed for from or against the said defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur to the said bill
530 and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall make any other or further answer to said bill, and that the said bill be dismissed.

JAS. J. SHRYOCK.

WESTERN DISTRICT, *ss:*

Personally before me came the above-named James J. Shryock, who, being by me duly sworn, says the foregoing demurrer is not interposed for delay, but in good faith.

JAS. J. SHRYOCK.

Sworn and subscribed before me this 25th day of July, A. D. 1885.

[SEAL.] WM. S. ROSE,
Notary Public.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

D. T. WATSON,
Sol. for Jas. J. Shryock.

531 *Demurrer of Jas. J. Shryock.*

May Term, 1884.

CHARLES S. YOUNG *et al.*
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY. } No. 17.

Filed August 1, 1885.

D. T. WATSON,
Att'y for Defendants.

532 In the Circut Court of the United States for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee,
vs.
THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.* } No. 25.

Petition for appeal from circuit court to Supreme Court.

The First National Bank of Cleveland, Ohio, The Mahoning National Bank of Youngstown, Ohio, Wick Brothers & Company, and Thomas H. Wells, of the same place, all citizens of Ohio; The First National Bank of Greenville, Pennsylvania, and The Second Na-

tional Bank of Erie, Pennsylvania, the last two being citizens of the State of Pennsylvania, respectfully showeth that by the order of the circuit court of the United States for the western district of Pennsylvania they were each permitted to intervene *pro inter esse suo* in the above-entitled cause, and were ordered to file their respective answers and cross-petitions, which they each did.

That such proceedings were had therein by said court; that on the 14th day of October, 1886, a certain final decree was en-
533 tered therein, by which decree the said The First National Bank of Cleveland, Ohio, The Mahoning National Bank of Youngstown, Ohio, Wick Bros. & Co., and Thomas H. Wells, and The First National Bank of Greenville, Pa., and The Second National Bank of Erie, Pa., feel themselves aggrieved, and doth appeal therefrom to the Supreme Court of the United States, and pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court, and that the amount of the bond, such as may operate as a supersedeas, may be fixed as provided by law.

ROBERT B. MURRAY,
Solicitor for Petitioners.

The above petition for an appeal is granted, and the amount of bond for supersedeas is fixed at fifty thousand dollars.

Washington, D. C., Nov. 5th, 1886.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court.

534 *Petition Praying for an Appeal.*

In the Circuit Court for the Western District of Pennsylvania. May Term, 1884. In Equity.

JOHN M. SHEDD, Trustee,
vs.
THE SHENANGO & ALLEGHENY R. R. Co., HENRY RAWLE, Trustee, *et al.* } No. 25.

Filed Dec. 7, 1886.

H. D. GAMBLE, *Clk.*

R. B. MURRAY,
Solicitor for Complainants.

535 Know all men by these presents that we, The First National Bank of Cleveland, Ohio; The Second National Bank of Erie, Pennsylvania; The First National Bank of Greenville, Pennsylvania; The Mahoning National Bank of Youngstown, Ohio; Wick Brothers & Company, and Thomas H. Wells, of the last-named place, and Edward Bingham, Joseph McCarter, and William Waugh, are held and firmly bound unto John M. Shedd, trustee, and Henry Rawle, trustee, in the full and just sum of fifty thousand dollars, to be paid to the said John M. Shedd, trustee, and Henry Rawle, trustee, their certain attorneys, executors, administrators, successors, or as-

signs, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of November, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at a term of the circuit court of the United States for the western district of Pennsylvania, sitting in equity on the 14th day of October, 1886, in a suit depending in said court between John M. Shedd, trustee, and Henry Rawle, trustee, the said First National Bank of Cleveland, Ohio; The Second National Bank of Erie, Pennsylvania; The First National Bank of Greenville, Pennsylvania; The Mahoning National Bank of Youngstown, Ohio; Wick
536 Bros. & Company, and Thomas H. Wells, of the last-named place, a final decree and order was rendered in favor of said John M. Shedd, trustee, and Henry Rawle, trustee, against the said First National Bank of Cleveland, Ohio; The Second National Bank of Erie, Pa.; The First National Bank of Greenville, Pa.; The Mahoning National Bank of Youngstown, Ohio; Wick Bros. & Company, and Thomas H. Wells, of the last-named place; and

Whereas the said First National Bank of Cleveland, Ohio; The Second National Bank of Erie, Pa.; The First National Bank of Greenville, Pa.; The Mahoning National Bank of Youngstown, Ohio; Wick Bros. & Company, and Thomas H. Wells, of the last-named place, have prayed an appeal to the Supreme Court of the United States, which has been allowed, and a citation directed to the said John M. Shedd, trustee, and Henry Rawle, trustee, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said The First National Bank of Cleveland, Ohio; The Second National Bank of Erie, Pa.; The First National Bank of Greenville, Pa.; The Mahoning National Bank of Youngstown, Ohio; Wick Bros. & Company, and Thomas H. Wells, of the last-named place, shall prosecute their appeal to effect and answer all damages and
537 costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

FIRST NATIONAL BANK OF CLEVELAND, OHIO.
By JAMES BARNETT, *Pres't.* [SEAL.]
SECOND NATIONAL BANK OF ERIE, PA.
By JOSEPH McCARTER, *Pres't.* [SEAL.]
FIRST NATIONAL BANK OF GREENVILLE, PA.
By WILLIAM WAUGH, *S'y.* [SEAL.]
MAHONING NAT'L BANK.
By H. O. BONNELL, *Pres't.* [SEAL.]
WICK BROS. & CO. [SEAL.]
THOMAS H. WELLS [SEAL.]
EDWARD BINGHAM [SEAL.]
JOSEPH McCARTER [SEAL.]
WILLIAM WAUGH [SEAL.]

Sealed and delivered in presence of—
R. B. MURRAY.

The within bond is approved.
Washington, Nov. 24, 1886.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the United States.

538 *Affidavit of Edward Bingham.*

JOHN M. SHEDD, Trustee, *vs.* HENRY RAWLE, Trustee.

539 STATE OF OHIO, }
Cuyahoga County, } *ss:*

Before me, the undersigned authority, personally appeared Edward Bingham, who, being duly sworn, says that he is the person by that name who has signed a certain appeal bond in the case of John M. Shedd, trustee, *vs.* Henry Rawle, trustee, *et al.*, in the circuit court of the United States for the western district of Pennsylvania, being number 25, May term, 1884; that he signed said bond as surety for appellants, the penal sum thereof being in the sum of fifty thousand dollars ($50,000.00). He further says that he is possessed of property, both real and personal, and is the owner thereof, and that the same is of the value of at least one hundred and twenty-five thousand dollars free and clear of all encumbrances and above his just debts; that he is the owner of not less than eighty-five thousand dollars' worth of real estate, free of encumbrance, in the county of Cuyahoga, State of Ohio. And further affiant saith not.

EDWARD BINGHAM.

Sworn to before me and subscribed by said Edward Bingham in my presence this 15 day of November, 1886.

[SEAL.] A. T. HILLS,
Notary Public.

540 *Affidavit of Joseph McCarter as to His Responsibility.*

May Term, 1884.

JOHN M. SHEDD, Trustee, }
vs. } No. 25.
HENRY RAWLE, Trustee. }

Filed Dec. 7, 1886.

H. D. GAMBLE, *Clk.*

541 THE STATE OF PENNSYLVANIA, }
Erie County, } *ss:*

Before me, the undersigned authority, personally appeared Joseph McCarter, who, being duly sworn, says that he is a resident of Erie, said county; that he has signed the appeal bond in the case of John M. Shedd, trustee, *vs.* Henry Rawle, trustee, *et al.*, pending in the circuit court of the United States for the western district of Pennsyl-

vania, No. 25, May term, 1884; that he is the owner of personal and real property to an amount of at least one hundred thousand dollars; that he is the owner of real estate free from incumbrance to value of seventy-five thousand dollars situated in said county.

The above statement is made excluding all debts and liabilities. And further affiant saith not.

JOSEPH McCARTER.

Sworn to before me and subscribed by said Joseph McCarter in my presence this 15th day of November, 1886.

[SEAL.] JNO. W. SHANNON,
Notary Public.

542 In the Circuit Court of the United States for the Western District of Pennsylvania. May Term, 1884.

JOHN M. SHEDD, Trustee, and HENRY RAWLE, Trustee, *vs.* THE SHENANGO & ALLEGHENY RAILROAD COMPANY *et al.* } No. 25. " 17.

WESTERN DISTRICT OF PENNSYLVANIA, *ss*:

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 21st day of December, A. D. 1886.

[Seal of the U. S. Circuit Court, W. D. Penna.]

H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss*:

I, M. W. Acheson, a judge of the United States circuit court for said district, do hereby certify that H. D. Gamble above named was, at the time of making the above certificate and is now, clerk of the said court, and that the said certificate made by him is in due form of law.

Pittsburgh, December 21st, 1886.

M. W. ACHESON, *Judge.*

543 The United States of America to John M. Shedd, trustee, and Henry Rawle, trustee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to petition and an order allowing an appeal filed in the clerk's office of the circuit court of western district of Pennsylvania, wherein The First National Bank of Cleveland, Ohio; The Mahoning National Bank of Youngstown, Ohio; Wick Brothers & Company, Thomas H. Wells, The Second

National Bank of Erie, Pennsylvania, and The First National Bank of Greenville, Pennsylvania, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and eighty-six.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the United States.

544 Notice of within served on me this Dec. 9, '86.
D. T. WATSON,
Att'y for Rawle, Trustee.

Dec'r 10th, 1886:—Service accepted.
DUNNING & EDSALL,
Att'ys for J. M. Shedd, Trustee.
JNO. M. SHEDD, *Trustee.*

Endorsed on cover: W. Pennsylvania C. C. U. S. No. 1317. The First National Bank of Cleveland, Ohio; The Mahoning National Bank of Youngstown, Ohio; Wick Brothers & Company, Thomas H. Wells, The First National Bank of Greenville, Pennsylvania, and The Second National Bank of Erie, Pennsylvania, appellants, *vs.* John M. Shedd, trustee, and Henry Rawle, trustee. Filed December 23, 1886.

SUPREME COURT OF THE UNITED STATES.

No. 1317.

ADDITION TO RECORD.

Assignment of Errors and Prayer for Reversal.

Supreme Court of the United States, of the October Term, 1887.

JOHN M. SHEDD, Trustee, *versus* THE SHENANGO AND ALLEGHENY RAILROAD COMPANY *et al.*	No. 1317.

On appeal.

Now come before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, The First National Bank of Cleveland, Ohio, The Mahoning National Bank of Youngstown, Ohio, Wick Brothers and Company (a firm composed of Paul Wick, Henry Wick, John C. Wick, Lucretia Bonnell, and Emily Bonnell), and Thomas H. Wells, all of the last-named place; The First National Bank of Greenville, Pennsylvania, and The Second National Bank of Erie, Pennsylvania, intervenors, by their attorneys, R. B. Murray and John Dalzell, and say that in the records and proceedings aforesaid there is manifest error, in this, to wit:

First. That the petition of John M. Shedd, trustee, and the petition of Henry Rawle, trustee, and the matters therein contained are not sufficient in law for the court to order and decree as therein prayed for and, as appears by the record in this case, the court did so order and decree.

Second. There is manifest error in each and all the findings of the court upon the issues made and in favor of Henry Rawle, trustee, and against said appellants.

Third. That there is manifest error in each and all the findings in the matters as found by the court in favor of John M. Shedd, trustee, and against said appellants.

Fourth. There is manifest error in the findings and orders of the court upon the motion of John M. Shedd, trustee, to order and decree the sale of [all] and singular the properties of the Shenango and Allegheny Railroad Company.

Fifth. There is manifest error in the findings and orders of the court upon the motion made by and on behalf of the said Henry Rawle, trustee, to the effect that the court shall order and decree a sale of all and singular the properties of the Shenango and Allegheny Railroad Company.

Sixth. That there is manifest error in the records and proceedings herein, in this, to wit, that the court found, ordered, adjudged, and decreed that the Shenango and Allegheny Railroad Company, on or about the 1st day of April, 1869, did make, acknowledge, execute, and deliver the mortgage or deed of trust and had power and authority so to do, as in said decree specified.

Seventh. There is manifest error, in this, to wit, that the court ordered, adjudged, and decreed that by said mortgage the said Shenango and Allegheny Railroad Company did grant, bargain, sell, and convey and transfer unto said Henry Rawle, trustee, all and singular the properties of the said Shenango and Allegheny Railroad Company then existing and thereafter to be acquired, as set forth in said decree.

Eighth. That there is manifest error, in this, to wit, that the court ordered, adjudged, and decreed that the said Shenango and Allegheny Railroad Company was in default of interest on the bonds purporting to be secured by said mortgage to Henry Rawle, trustee, in the amount of seventy thousand dollars ($70,000.00).

Ninth. That there is manifest error in said record and proceedings, [in this], to wit, that the court found, adjudged, and decreed that under and in accordance with the provisions of the said mortgage to said Henry Rawle, trustee, the said trustee was entitled, with or without entering upon and taking possession of said mortgaged property, to sell the same and deeds to purchaser to make in fee-simple for all and singular the properties of the defendant company.

Tenth. That there is manifest error in the record and proceedings aforesaid, in this, to wit, that the court found that, under the mortgage to John M. Shedd, trustee, such default had been made under said mortgage as entitled the said John M. Shedd, trustee, to sell all and singular the properties of the said Shenango and Allegheny Railroad Company.

Eleventh. That there is manifest error in said record, in this, to wit, that the court found, adjudged, and decreed that there are outstanding secured by said mortgage to the said Henry Rawle, trustee, bonds aggregating in amount, at their face value, one million of dollars ($1,000,000.00), with the interest coupons for the payment of interest from the 1st day of October, 1884, down to date.

Twelfth. That the court erred in finding, adjudging, and decreeing that there was outstanding the sum of three hundred and seventy-five thousand dollars ($375,000.00) of the bonds secured by the mortgage to said Devereux, trustee.

Thirteenth. That there is manifest error in the finding and order of the court that there were outstanding receiver's certificates amounting to one hundred and fifty-five thousand eight hundred and forty-nine dollars and $\frac{87}{100}$ ($155,849.87); which sum, with interest, was absolutely due and payable, and that the sum, together with com-

pensation, expenses, and allowances to said receiver and said trustee, and to any of the parties of said cause, were prior allowances to the mortgage of John M. Shedd, trustee.

Fourteenth. That the court erred in authorizing, ordering, and empowering the said Henry Rawle, trustee, to proceed and sell all the properties of said Shenango and Allegheny Railroad Company on the 25th day of January, 1887, and the court erred in authorizing and empowering said John M. Shedd, trustee, to sell the properties of said Shenango and Allegheny Railroad Company as provided in said decree.

Fifteenth. That the court erred in not finding the amounts of the claims of the different parties, and the priorities thereof, and the specific property upon which the same was a lien, before ordering a sale thereof as prayed for in appellants' answer and cross-petitions.

Sixteenth. That the court erred in its findings, orders, and decrees as to the motion filed by both trustees for the sale of the entire property.

Seventeenth. That there is manifest error in the record in this case, to wit, that the court erred in finding that the Shenango and Allegheny Railroad Company had the power to mortgage its franchises and after-acquired property on the 1st day of April, 1869.

Eighteenth. There is manifest error in the record in this case, to wit, in the findings, orders, and decrees as to the holders of one-half of all the bonds issued under said Rawle mortgage presenting their written request, and as to the holders of $300,000.00 of said bonds presenting their written request for the foreclosure of said mortgage.

Nineteenth. That there is manifest error in the record in this case, to wit, that the court ordered, adjudged, and decreed that the said Henry Rawle, trustee, under and in accordance with the provisions of said mortgage, "was entitled, either with or without entering upon and taking possession of said mortgaged premises, to sell the same in accordance with the terms of said mortgage," which erroneous order and decree will more fully appear by an inspection of said record.

Twentieth. That there is manifest error in the record in this case, to wit: "And the court do further order, adjudge, and decree that the said Henry Rawle, trustee, is entitled to proceed and foreclose the said mortgage, and that the said property so mortgaged be sold."

Twenty-first. The court erred in finding that "the holders of all said outstanding bonds issued under the mortgage, to wit, Devereux, trustee," have elected that the principal and interest shall become due and payable forthwith.

Twenty-second. The court erred in finding, adjudging, and decreeing that the said mortgages were liens upon "so much of the property * * * as was thereby lawfully conveyed to said respective trustees and which thereafter become vested in the said trustees, respectively, as after-acquired property," and refusing to find, order, and decree the specific property, upon which each was a lien, the amount thereof, and the priority thereof, if any.

Twenty-third. That there is manifest error in the record and proceedings aforesaid in each and all the findings, orders, and decrees as to the payment of the purchased price at which said properties might be sold, especially in fixing the per cent. of the several bonds which might be received in payment of the purchased price and in making the same provisional only.

Twenty-fourth. That by the record aforesaid it appears that the findings, orders, and decrees aforesaid given were given for the said John M. Shedd, trustee, and the said Henry Rawle, trustee, whereas, by the law of the land, the said orders and decrees ought to have been given for appellants as prayed for in their cross-petition; and the appellants aforesaid pray that each and all the aforesaid findings, orders, and decrees may be reversed, annulled, and all together held for nothing, and that they may be restored to all things which they have lost thereby.

ROBT B. MURRAY AND
JOHN DALZELL,
Solicitors for Appellants.

[Endorsed:] October term, 1886. Case No. 1317. In United States Supreme Court. John M. Shedd, trustee, *vs.* Shenango and Allegheny R. R. Co. *et al.* Appeal. Assignment of error by appellants, First National Bank of Cleveland *et al.* R. B. Murray, John Dalzell, attorneys for appellants. Sup. Court U. S., 1886. October term. No. 1317. The First National Bank of Cleveland *et al.*, app'ts, *vs.* John M. Shedd, trustee, & Henry Rawle, trustee. Assignment of errors & prayer for reversal.

[Stamped:] Office Supreme Court U. S. Filed Dec. 30, 1886. James H. McKenney, clerk.

Twenty-third. That there is manifest error in the record and proceedings aforesaid in each and all the findings, orders, and decrees as to the payment of the purchased price at which said properties might be sold, especially in fixing the per cent. of the several bonds which might be received in payment of the purchased price and in making the same provisional only.

Twenty-fourth. That by the record aforesaid it appears that the findings, orders, and decrees aforesaid given were given for the said John M. Shedd, trustee, and the said Henry Rawle, trustee, whereas, by the law of the land, the said orders and decrees ought to have been given for appellants as prayed for in their cross-petition; and the appellants aforesaid pray that each and all the aforesaid findings, orders, and decrees may be reversed, annulled, and all together held for nothing, and that they may be restored to all things which they have lost thereby.

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121-74

IN THE

Supreme Court of United States.

No. 1317 October Term, 1886.

THE FIRST NATIONAL BANK OF CLEVELAND, OHIO, et al.

versus

JOHN M. SHEDD, Trustee, and HENRY RAWLE, Trustee.

BRIEF ON BEHALF OF APPELLANTS

In Answer to Motion to Dismiss.

JOHN DALZELL,
Of Counsel for Appellants.

PITTSBURGH:
CALLOW & CO. PRINT, 543 SMITHFIELD STREET.
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No. 1317 OCTOBER TERM, 1886.

THE FIRST NATIONAL BANK OF CLEVELAND, OHIO, ET AL., Appellants,

versus

JOHN M. SHEDD, Trustee, and HENRY RAWLE, Trustee, Appellees.

APPELLANTS' STATEMENT OF FACTS.

The Shenango and Allegheny Railroad Company was incorporated originally as the Bear Creek Railroad Company by an Act of the General Assembly of Pennsylvania, approved the 20th day of March, 1865, with power to construct a railroad "from Martinsburg, in Butler county, by such route as they shall deem most feasible and proper, to connect with the Erie Extension Canal and the Erie & Pittsburgh Railroad, at such point between Sharpsburg and West Greenville, in Mercer county, as the Directors of said Company shall determine." By an act approved

April 9th, 1867, the name was changed to the Shenango & Allegheny Railroad Company, and authority was given "to commence the construction of their railroad within two miles of South Greenville, in Mercer county, and to terminate the same at or near the mouth of Bear Creek, in Butler county."

In March, 1869, the Directors of the Company authorized an issue of bonds to an amount not exceeding in the aggregate the sum of one million (1,000,000) dollars, "upon that portion of the road, now constructed and to be constructed, between the western terminus thereof, at its junction with the Erie & Pittsburgh Railroad in West Salem township, Mercer county, and a point in Butler county forty miles southeastwardly from the said western terminus," to be secured by a mortgage to Henry Rawle, Trustee, which should "convey the main line of the Shenango & Allegheny Railroad, now partly constructed and to be hereafter constructed, between the western terminus thereof, in the county of Mercer, at its junction with the Erie & Pittsburgh Railroad, and a point in Butler county on said railroad, forty miles southeastwardly from the said western terminus, and all its appurtenances, equipments, rolling stock and things belonging to the Company."

Ostensibly in pursuance of this resolution a mortgage was executed, dated April 1st, 1869, to Henry Rawle, Trustee, [upon the face of which mortgage appeared the said resolution], which undertook to convey in trust "all and singular the continuous railroad extending from its western terminus, the junction with the Erie & Pittsburgh Railroad in the township of West Salem, county of Mercer, and State of Pennsylvania, southeastwardly for a distance of forty miles to a point in the county of Butler, in said state, both partially constructed and partly unfinished and now in process of construction, or hereafter to be constructed and finished between the points aforesaid, com-

prising the line of the said Shenango & Allegheny Railroad, including all the railways and rights of way, depot grounds and other lands owned or held by the said Company, all tracks, bridges, viaducts, culverts, fences and other structures, all depots, station houses, engine houses, car houses, freight houses, wood houses, water tanks and other buildings, and all machine shops and other shops held or acquired for use in connection with said railroad or the business thereof, and including all locomotives, tenders, cars and other rolling stock or equipments, and all machinery, tools, implements, fuel and materials for constructing, operating, repairing or replacing the said railroad, or any part thereof, or any of its equipments or appurtenances, whether now held or hereafter acquired; *and any lateral or branch roads, with their appurtenances, that may hereafter be constructed by or come into the possession of the Company, along the line of the aforementioned forty miles of main line, or connected therewith.* All of which things are hereby declared to be appurtenances and fixtures of the said railroad; and also, all franchises connected with or relating to the said railroad, or the construction, maintenance or use thereof, now held or hereafter acquired by the said party of the first part, and all corporate and other *franchises* which are now *or may be hereafter possessed or exercised* by the said party of the first part."

The power of the Company to make a mortgage has never been called in question.

But, it will be observed that the mortgage just recited is not the mortgage authorized, in this respect, that no authority was given to mortgage *after-acquired property or after-acquired franchises, or to mortgage any branches.*

It will be observed, also, that at the time of the passage of the resolution and the execution of the mortgage, the Company had no legislative authority to construct branches.

and its entire main line, as authorized, was only forty miles in length.

Doubtless the mortgage made is valid in so far as it conforms to the terms of the resolution authorizing its execution, but it is void in so far as it is an attempt to impose a lien upon after-acquired property and franchises, and upon branches, the power to construct which did not then exist, and it can cover only a railroad forty miles in length.

By an act approved April 14th, 1870, the Company was authorized "to so extend their eastern terminus as to connect with the Allegheny Valley Railroad, and to so extend the western terminus as to connect with any other railroad." And by an act approved the 7th of March, 1872, the Company was authorized "to construct three branches from their railroad, as may be necessary and convenient for the development and transportation of coal, ore, limestone and other minerals in the vicinity of their railroad, provided the said branches shall not exceed a distance of ten miles from the main line of said Company."

On July 1st, 1877, a mortgage was executed in favor of John H. Devereaux, Trustee, to secure the payment of bonds to an amount in the aggregate not exceeding one million (1,000,000) dollars. This mortgage conveyed to Devereaux, Trustee, "the entire railroad built and to be built of the said Shenango & Allegheny Railroad Company, from its junction with the Atlantic & Great Western Railroad, near the town of Greenville, in Mercer county, Pennsylvania, to the Allegheny Valley Railroad on the east side of the Allegheny river, together with all its branches, extensions, side tracks, switches and turn-outs built and to be built, and also all lands, rights, franchises and appurtenances thereunto belonging, and also all engines, locomotives, cars, tools, machinery, rolling stock, supplies and personal and real property of every name and

nature connected with or belonging to the said Company, on or along its said railroad, and used by it in operating its said railroad, whether said property is now in existence or shall hereafter be built or constructed, and whether said property has now been acquired by the said Company, or shall be hereafter acquired by the said Company; and also all corporate rights and franchises of said railroad company.",

This mortgage upon its face professed to be "subject to a previous mortgage on forty miles of the northwestern end of the railroad aforesaid, and its appurtenances, executed to Henry Rawle, Trustee, to secure the payment of the bonds of the Company, to the amount of one million (1,000,000) dollars, and the coupons thereto attached."

The contention of the appellants is, that the first made mortgage is a lien upon the main line of the Shenango & Allegheny Railroad, forty miles in length, as authorized to be constructed by the legislation in force at the time of the execution of the mortgage, and that, as to all the remainder of said railroad, to wit, its extensions beyond its original terminal points, its branches and franchises acquired by legislation subsequent to the date of the original mortgage, the said second mortgage is a first lien, while it is also a second lien upon the forty miles of the main line.

Such being the situation of affairs on the 15th day of March, 1884, at No. 17 May Term, 1884, of the Circuit Court of the United States, for the Western District of Pennsylvania, Charls L. Young, claiming to be a creditor of the Shenango & Allegheny Railroad Company, filed his bill in equity against said Company, setting out its insolvency, default in the payment of the coupons of the first mortgage bonds and praying the appointment of a Receiver; and thereupon the Court appointed Thomas P. Fowler Receiver. On June 6, 1885, Henry Rawle, Trustee under the first mortgage, filed his petition in this same case and prayed that the Court would turn over the custody of

the said railroad to him as Trustee of the first mortgage bondholders. Both the Receiver and the Railroad Company resisted this application. Amongst other things the Receiver set out "that questions exist as to the respective priorities of the bondholders secured by the mortgage of April 1, 1869; that other questions of priority, such as these relating to the expenses of this cause and other charges, may arise, and that it will be highly inexpedient to make any order of sale of the property covered by the mortgage *until the exact extent of said encumbrances and charges be determined, and the order of priority of said liens ascertained. Until such matters are determined, it would not be possible for encumbrancers to know how to protect their respective interests at said sale, and the uncertainty thus existing would have an injurious effect upon the said sale and upon the price to be obtained thereat.*" (p. 196.)

The Railroad Company set forth substantially the same reasons against the granting of the prayer of Rawle's petition.—pp. 197-et. seq.

These reasons prevailed with the Court, and the prayer of Rawle, Trustee, was refused. The Court said—inter alia, (p. 168):

"But it is alleged by holders of bonds under a subsequent mortgage, through their trustee and other creditors:

"1st. That the mortgage in question binds only fifty miles of the main line of the railroad by express limitation in the mortgage, and does not bind any of its branches, because they were not constructed at the date of the mortgage, and no authority was given to construct them until afterwards; hence, that a sale of the main line of the road and its branches, until the scope of the mortgage is authoritatively ascertained and defined, would operate injuriously upon the rights and interests of the other creditors of the Company.

"2d. That a large amount of the first mortgage bonds represented by the petitioner have been extinguished by payment or are invalid in the hands of their present holders; and that, therefore, until the amount of that mortgage is liquidated, and the extent of the indebtedness secured by it is determined, the holders of subsequent securities can not intelligently protect their interests at the sale."

Thereupon the Court suggested that John H. Devereaux, Trustee, under the second mentioned mortgage should file a bill to determine the relative rights of the various parties in interest. Since that time no further proceedings have been had in said original case at No. 17 May Term, 1884.

On September 5th, 1885, John H. Deveraux, Trustee, in the second recited mortgage, filed his bill at No. 25 May Term, 1884, of the same Court, against the Shenango & Allegheny Railroad Company, Henry Rawle, Trustee under the first recited mortgage, Thomas P. Fowler, Receiver, and certain parties claiming to be creditors of the Shenango and Allegheny Railroad Company. This bill set out the trusteeship of the Plaintiff, a default in the payment of overdue coupons, the insolvency of the Company, and further, that disputes had arisen between the holders of bonds secured by the first and second recited mortgages respectively, and other creditors of the Railroad Company, as to the extent of property covered by the lien of the first recited mortgage, and as to the priority of its lien, and as to the amount due upon bonds secured by it, and further that "The extent of the property covered by the said mortgage to Henry Rawle, Trustee, the priority of the lien of the said mortgage thereon and the amount due upon the bonds secured by the same, are each and all undetermined and in dispute, and that no advantageous or just sale of the said railroad property could be made subject to the said mortgage, in as much as the purchaser or purchasers at said sale would not with certainty be able

to know precisely what property would be acquired by them, or what liens, if any, might exist upon the same in their hands." This bill further set out the issue of Receiver's certificates, and the existence of claims upon the part of the Receiver as to costs, charges and expenses. It then went on to pray that an accounting might be had of the amount of bonds outstanding and secured by the first mortgage; that a similar accounting should be had as to the amounts due upon bonds secured by the second recited mortgage executed to Henry Rawle; and a similar accounting as to the amount due upon Receivers' certificates, and for costs, charges and allowances to the Receiver; and *that thereupon* the mortgaged premises should be sold under the direction of the Court, and proper distribution made.

On June 10th, 1886, The First National Bank of Cleveland, et. al., claiming to be holders of bonds secured by the second recited mortgage, presented a petition asking leave to intervene *pro inter-esse suo* as parties, and such leave was granted.

Subsequent to the filing of this bill John H. Devereaux, Trustee, died.

On June 16th, 1886, John M. Shedd, who had been substituted in the place of John H. Devereaux as Trustee, filed an amended bill, which set out in substance that which was set out in the bill filed by Devereaux, but differed from the latter in this respect, that it contained, in Schedule B. annexed to the bill, a full, comprehensive and accurate description of the property of every kind belonging to the Shenango & Allegheny Railroad Company. The prayer of this latter bill conformed to that of the Devereaux bill.

On the same day, to wit, June 16th, 1886, Henry Rawle, Trustee, named in the first recited mortgage, filed a cross bill, reciting the history of said railroad company, and its

encumbrances, and claimed that, under the terms of the mortgage to him, he had a lien, not simply upon the main line, forty miles in length, but upon the entire railroad and its branches, and upon all its property of every nature and kind, and upon its franchises, both those existing at the time of the execution of the mortgage, and those which were conferred upon it by legislation subsequent thereto. This bill set out, also, the insolvency of the Company, and that disputes existed between the holders of the bonds secured by the said two mortgages respectively, and the holders of Receiver's certificates, and prayed for a decree that the said first recited mortgage should be determined to be a lien upon the entire railroad as aforesaid, and all its property; and that, in default of payment of the overdue coupons, he should be permitted to foreclose the mortgage and proceed to sell; and that the proceeds of sale should be paid into court and distributed in accordance with the respective liens, rights and equities of the parties claimant against said railroad company, "except that the said sale shall be upon such terms, if any, as to the Court should seem meet, to the effect that in the payment of the sum bid for the same at the sale, mortgage bonds of the said company and the coupons thereof, secured as aforesaid by the mortgage to him, should be accepted in part payment of the same. The bill prayed, also, that he should be authorized and empowered to take possession of all the property, real, personal and mixed, of the said defendant company, and to manage, operate and control the same, and to collect and receive the rents, profits and incomes thereof, and apply the same for the benefit and advantage of the bondholders under the said mortgage or deed of trust made to him.

On June 26th, 1886, the First National Bank of Cleveland et al., who had been allowed to intervene by order of Court made on June 10, filed what is called an answer to the cross bill of Henry Rawle, Trustee, wherein the history of the

Shenango & Allegheny Railroad Company, its legislation and encumbrances, are set out substantially as hereinbefore recited. This answer also denies that certain of the bondholders under the first recited mortgage are *bona fide* holders of said bonds for value. And it denies that the mortgage held by Henry Rawle, Trustee, is a lien upon any part of the said railroad, except the forty miles of main line, and avers that the mortgage to John H. Devereaux, Trustee, under which the parties answering hold, and claim, is a second lien upon the said forty miles of main line, and a first lien upon the extensions, the branches and all property of every nature and kind belonging to said railroad, except in so far as the same is appurtenant to the said forty miles of main line. This answer sets out, in substantially the same terms as did the amended bill of John M. Shedd, the impropriety of any sale of the premises in question pending the determination of the relative rights of the various lien holders, and the determination of the particular property upon which each have liens, and prays that an accounting may be had, that the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined, that the extent of the lien of each may be judicially ascertained, *and upon the final determination of these matters, and not before*, that an order of Court may be issued to sell the mortgaged premises; and prays also for general relief.

The total issue of bonds under the first recited mortgage aggregated a million dollars, but it is denied that the holders of six hundred thousand (600,000) dollars of this issue are *bona fide* holders for value. The issue of bonds under the second recited mortgage does not exceed four hundred thousand (400,000) dollars, and of this amount the appellants are the holders of about one hundred and ninety thousand (190,000) dollars.

For some reason or other, not apparent on the face of

the pleadings, John M. Shedd, (appellants' trustee), became suddenly a convert to the notion that the railroad ought to be sold, not *after* an ascertainment of the amount of liens, which was the theory of his bill, and a determination of the property to which they applied, *but before*, and on June 18, 1886, comes into Court with a motion that he be allowed to sell on his mortgage. Strange to say, Rawle, Trustee, on the same day appears and makes a similar motion in his behalf; and the Receiver, through his solicitor, consents, and so does the railroad company, through its solicitor.

Such action reveals with great transparency the fact that some scheme of sale and re-organization has been matured, in which the appellants have been left out.

On the argument of this motion it was urged most strenuously that the majority interest favored the sale, that the appellants represented such small fraction of the entire liabilities as to merit no notice. All this, of course, was on the assumption that the entire issue of bonds under the Rawle mortgage had been *bona fide*, and not, as alleged by appellants, fraudulently to the officers of the railroad company, at a sum much less than par.

Although the Receiver's report before the court, for the last six months of his management, showed that the road was earning per cent on its capital, and that no exigency existed demanding a sale in advance of the short time that would be necessary to decide the questions at issue between the parties, the court yielded to the urgency of the combined majority, and ordered a sale of the property, leaving the conflicting claims of the parties to be adjusted thereafter.

Waiving the question as to regularity of the pleadings, as to whether they are respectively called amended bill, cross bill and answer with strict propriety, it is perfectly apparent, upon the statement of all parties as set forth in

each of the pleadings, *that disputes existed as to the priority of lien, and as to the extent of property, and as to what the particular property is to which the liens severally applied*, and as to the amount of lien; and the question was therefore fairly before the court below, whether or not an order of sale could properly be made pending the determination of these disputes.

The application made was to reverse the ordinary and well-recognized rule of practice in such cases, which demands that the status of the various lien holders, and the determination of the property to which the liens severally apply, should be fixed in advance of any sale of the property in question.

The decree ordering a sale left the appellants utterly in the dark as to their rights to the property in dispute, afforded them no standard according to which they might appear as bidders at the sale, and left wholly undetermined the question as to whether they had any interest at all, and who had an interest, in the railroad property.

This is the error of which the appellants complain, and to right which this appeal was taken.

ARGUMENT.

I. The decree of the court below is final, within the meaning of that term, for the purposes of an appeal.

It is a decree foreclosing two mortgages and exposing the mortgaged premises to sale.

Further, it is a decree appointing the trustees in each of the mortgages special commissioners, under the powers of the court below as a court of chancery, to sell the property in question for the express purpose of divesting all existing titles thereto, and vesting them in the purchaser.

"A decree for a sale under a mortgage is such a final decree as may be appealed from." Ray vs. Law, 3 Cr. 179.

"A decree of foreclosure and sale is final upon the merits of the controversy; an appeal lies therefrom." Whiting vs. Bank of U. S., 13 Wh. 6.

Why? Because "if the sale had been completed under the decree, the title of the purchaser under the decree would not have been overthrown, or invalidated, even by a reversal of the decree; and consequently the title of the defendants" [here of the appellants, mortgagees] "would have been extinguished; and their redress upon the reversal would have been of a different sort from that of a restitution of the land sold." Id. 15.

By the execution of the decree in this case, the title not only of the railroad company, but of the mortgagees and the bondholders whom they respectively represent—among them the appellants—is to be divested, and that of the purchaser can not hereafter be affected by any reversal of the decree. There can not hereafter, even upon reversal, be any restitution of the railroad property sold.

A decree of foreclosure and sale is *ex vi termini*, irrespective of questions arising or to be determined thereafter, a final decree from which an appeal lies.

Such we understand to be the meaning of this court, as declared in Bronson vs. Lacrosse & Mil. R. R. Co., 2 Black 531. The language there made use of is this: "In the case of Ray vs. Law (3 Cranch 179) and Whiting vs. Bank of U. S. (13 Wheaton 15), this court has decided that a decree for the sale of mortgaged premises is a final decree from which an appeal lies. The court rested their decision on the ground that when the mortgage was foreclosed and a sale ordered, *the merits of the controversy were finally settled, and the subsequent proceedings were simply a means of executing the decree.*"

To adapt the language of this court in that case to the facts of this case, we may say: If the appellants have to sit quietly by, without any information as to what their rights are in the property for sale, (called in question and denied as they are), until the equities of all lienholders are determined, they may be ruined before they can avail themselves of their right to appeal.

If the court should finally find that the appellants are entitled to their whole claim, and that the Rawle bondholders are entitled to not half of theirs, and in the meantime the property has passed to a purchaser at a sale, where appellants have such an uncertain interest as to deprive them of the rights of bidders, how would their success benefit them? "It would be a victory barren of results."

May we not say, still quoting the language of this court in the case just cited: "A rule from which consequences so injurious to the rights of parties litigant, would necessarily result, has never received the sanction of this court. This decree is not final in the strict technical sense of the word, for something yet remains for the court below to do; but as was said by Chief Justice Taney in Forgay et al. vs. Conrad (6 Howard 203): 'this court has not therefore understood the words, 'final decrees,' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the legislature.'"

In Milwaukee & Minn. R. R. Co. vs. Soutter, 2 Wallace 440, it was *held* that, "an order of the Circuit court on a bill to foreclose a mortgage, ascertaining — in intended execution of a mandate from this (the Supreme) Court—the amount of interest due on the mortgage, directing payment within one year, and providing for an order of sale in default of payment, is a 'decree,' and a 'final decree,' so far as that any person aggrieved by supposed

error in finding the amount of interest, or in the court's below having omitted to carry out the entire mandate of the Supreme Court, may appeal."

It was a final decree, because it divested title to the property in question.

The principle is the same as that declared in Railroad Co. vs. Bradleys, 7 Wall. 575, where a decree ordering an injunction, previously granted to restrain a sale under a deed of trust, to be dissolved, and directing a sale according to the deed of trust, and the bringing of the proceeds into court, was held to be a final decree.

If the decree had been limited to the dissolution of the injunction, this court said, "thereby merely *permitting* the trustees to sell under the trust," the decree *might not* have been final.

The direction to sell fixed its character as an appealable decree.

The true rule upon this subject undoubtedly is that laid down in Forgay vs. Conrad, 6 Howard 204, to wit: "Where the decree decides the right to the property in contest, and directs it to be delivered up, *or directs it to be sold*, and the complainant is entitled to have it carried into immediate execution, the decree must be regarded as final *to that extent*, although it may be *necessary, by a further decree, to adjust the account* between the parties."

In the case at bar, in the contest between the appellants and Rawle, Trustee—

(1) The property in contest is directed to be sold;

(2) Rawle, Trustee, is entitled to have the direction carried into immediate execution;

(3) Though it is necessary, by a further decree, to adjust the accounts between him and the appellants and others.

Therefore, on the authority of the case just cited, "*the decree must be regarded as final.*"

Attempts have been made to shake the authority of Forgay vs. Conrad. It was said in Bebee vs. Russell, 19 Howard 287: "In Forgay's case it (the question of the finalty of the decree) was made upon the decree given by the court below, and it was adjudged by this court to be final to give this court jurisdiction of it. But it was so, upon the ground that the whole merits of the controversy between the parties had been determined, *that execution had been awarded*, and that the case had been referred to the Master merely for the purpose of adjusting the accounts. The fact is, *the order of the court in that case for referring it to a Master was peculiar*," &c.

Upon this decision counsel for the motion to dismiss place great stress. But they overlook the fact that this court has since said, in Thomson vs. Dean, 7 Wall 345-346: "It is insisted that this court has held that no decree which does not completely dispose of the whole cause is final, and that this decree, though disposing completely of the controversy as to the ownership of the stock, is not final because it directs certain accounts to be taken. It is true that this court has always desired that appeals be taken only from decrees which are not only final but *complete*, and has, upon one occasion at least, directed the attention of the circuit courts to the expediency and importance of refraining from making *final* decrees on any part of a cause, however important, until prepared to dispose of it *completely*. Such a course would undoubtedly save much inconvenience, both to the circuit court and this court, and diminish largely the expense of litigation to suitors. And it may be true that, under the influence of these considerations, the degree of finalty essential to the right of appeal has been sometimes pushed quite to the limit of construction. *But we think that the current of decisions fully sustain the rule laid down by the late Chief Justice in the case of Forgay vs. Conrad, and which we again declare in his own language*," &c., &c.

As in Forgay vs. Conrad, so in Thomson vs. Dean, a decree was made authorizing an immediate change of the title of the property, *but the equities of the parties were postponed for future decision and decree.*

The decrees in both cases were *held* to be final for the purposes of appeal.

Appeals from decrees of sale and subsequent appeals from decrees of distribution are of frequent occurrence in both State and Federal practice, and this court has said in Blossom vs. Railroad Co. 1 Wall. 657:

"Although this court has frequently decided, that where the act complained of was a mere ministerial duty, growing out of the decree which was being carried into effect, no appeal would lie, it has never decided that in no case arising after a decree which is final only in the sense which would allow it to be appealed, will an appeal be allowed from an order of the court, however it might affect important interests or decide matters not before the court when the first decree was rendered. Such a doctrine would place a very large proportion of the most important matters adjudged by courts of chancery beyond the reach of an appeal. On the contrary, this court has repeatedly considered appeals from decrees of the circuit courts upon matters arising after the case had been here and the courts below had entered decrees in accordance with the directions of this court. At the present term, in the case of A. R. Orchard vs. John Hughes, the court refused to dismiss an appeal from an order confirming a sale under a decree of foreclosure, and directed that the case should be heard with the appeal from the principal decree in the suit which ordered the sale."

We are unable to see anything in any of the cases cited by the counsel for the motion to dismiss that militates against the doctrine of Forgay vs. Conrad, or tends to show the decree appealed from to be other than final.

Bostwick vs. Brinckerhoff, 106 U. S. 3, simply decides that a judgment awarding a new trial is not a final judgment. It seems a great wonder that any lawyer ever could have supposed it was.

In Grant vs. Phoenix Ins. Co., id. 429. no *sale* of the premises was ordered. Of course the decree was not final.

St. L. & I. M. & S. R. R. Co. vs. Southern Ex. Co., 108 U. S. 124, was a proceeding to prevent a railroad company, by injunction, from discriminating between express carriers. The injunction was granted, with leave to the injured party to invoke the court's aid thereafter against exorbitant charges. The decree ended the cause of litigation, and was therefore final.

The assertion is made with confidence that not a single case can be found in the Federal Reports where the title of the mortgagor, or of a mortgagee, (there being a conflict of claims between mortgagees), has been decreed to immediate divesture by sale, where (whether accounts were to be thereafter settled or not) the decree of sale has not been held to be a final decree for the purposes of appeal.

And so we argue that the decree appealed from is final as to our rights, so far as to give us a hearing upon its merits in this court.

It is argued, however, that no controversy exists as to the propriety of a sale; that the appellants pray for such sale; and hence, that as to that all parties are agreed.

But the prayer of the appellants is for a sale on the Devereaux-Shedd mortgage, and in accordance with their theory as to its lien. The order of sale is upon both mortgages, and outside of either, and without any definition of liens. Every line and letter of appellants' answer is a protest against any sale until their rights have been judicially determined. The decree is a denial of the relief for

which they pray, *i. e.*, a sale in such mode as shall advise them of their interest in the property, as compared with other interests. This they had a right to have.

"Where a right of priority is in dispute, it ought to be settled before a sale, so that the party holding the first encumbrance can bid upon the property up to the amount of his claim." Jones on Railroad Securities, sec. 447.

"A court of equity will in no instance expose for sale an interest capable of being reduced to a certainty, where any doubt exists as to its character and extent." Sutherland, Trustee, vs. L. S. Canal & Iron Co. et al., 1 Cent. Law Journal 127 (per Emmons, Cir. J.)

"A party holding a first incumbrance on property about to be brought to sale ought not to be deprived of the right of bidding on the property up to the amount of his claim; therefore, when his right of priority is in dispute, it ought to be settled before the sale." Campbell vs. Texas & N. O. R. R. Co., 2 Woods' Cir. Ct. 264.

Moreover, the prayer by the appellants for a sale is not absolute. It was made with a belief in the correctness of the principles just cited, and is conditional upon the finding by the court of the facts necessary to justify such sale. The prayer is for an *accounting*, for an ascertainment of bonds outstanding in the hands of *bona fide* holders for value, for a determination of liens, and *thereupon* for a sale. It is not for a sale regardless of this accounting, of this ascertainment of the legitimacy of liens and their extent, *but for a sale in case the investigation justifies it*. It certainly can not be argued with any plausibility that if the investigation prayed for by appellants had disclosed such facts as would not in law justify a sale, they would have been precluded from an appeal from an unjust and illegal order of sale, because they had prayed for a sale.

This proposition seems too plain to admit of argument. The logic of the argument that the appellants' prayer for a sale at a particular time, and in a particular way, precludes them from an appeal from any kind of an order of sale, would put the appellants in the position of being remediless as against the most absolute sacrifice of their rights.

And this brings us to the examination of the decree made as a final decree from another point of view.

"What is indispensable in such a decree" (for sale on foreclosure) "is, that there should be declared the *fact*, *nature* and *extent* of the default which constituted the breach of the condition of the mortgage, and which justified the complainant in filing his bill to foreclose it, and the *amount due on account thereof*, which, with any further sums subsequently accruing and having become due, according to the terms of the security, the mortgagor is required to pay, within a reasonable time, to be fixed by the court, and which, if not paid, a sale of the mortgaged premises is directed. This is that final decree of foreclosure and sale, which determines and fixes the rights of the parties, and from which, on that account, an appeal lies." Ch. & Vinc. R. R. Co. vs. Fosdick, 108 U. S. 70.

How does the decree appealed from differ from a final decree as thus defined?

It declares—

(1) The fact of default;

(2) The nature of the default;

(3) The extent of the default which constituted the breach of the condition of the Rawle mortgage (pp. 134-35).

It declares the amount due on account thereof (ibid).

Is this any less a final decree because, after having found that which it was absolutely indispensable should be

found, as the ground of a decree of sale, the court say—but we reserve the right to inquire and determine whether our figures are right, our present findings correct, after the sale shall have been made and title divested?

"It is obvious that the finding of the amount due, for non-payment of which, according to the terms of the decree, the mortgaged property is ordered to be sold, *is the foundation of the right of the mortgagee further to proceed, and a substantial error in that finding must, on appeal, vitiate all subsequent proceedings*. Unlike a calculable error in the amount of a personal judgment, which may be cured by a *remittitur*, it is otherwise incurable, for as it is an illegal exaction, made as a condition for preserving the rights of the mortgagor in his estate, and, if executed, depriving him wrongfully of them, it propagates itself through all subsequent stages of the cause. The right to redeem is a favorite equity, and will not be taken away, except upon a strict compliance with the steps necessary to divest it. Bigler vs. Waller, 14 Wall. 297; Shillaber vs. Robinson, 97 U. S. 68. In Clark vs. Reyburn, 8 Wall. 318, a decree of strict foreclosure, which contained no finding either of the fact or amount of the alleged indebtedness, and gave no time within which to pay or redeem, was reversed on these grounds, although the bill was taken *pro confesso* as to the parties having the entire beneficial interest, and contained an averment of the precise amount of the mortgage debt then due. The same consequences undoubtedly would have followed if it had been a decree of foreclosure and sale, instead of a strict foreclosure; and the error is as vital where a larger amount than is actually due is ordered to be paid, as where there is a failure to find what amount is due." Ibid. p. 71.

The attempt in the case at bar seems to have been to find the fact, nature and extent of the default which constituted the breach of the condition of the mortgage, and

the amount due on account thereof, for the purposes of a sale, but only *provisionally, and not for the purposes of an appeal.*

We submit that the decree can avail only as an absolute decree, and must be regarded either as one thing or as another. It is either final, containing all the requisites of a final decree, or it fails to find with accuracy and exactness the amount due, which is the foundation of the right of the mortgager to proceed further.

In either event an appeal is well taken.

II. The appeal was not taken for the purpose of delay.

Presumably, of course it was not. This presumption counsel for the motion suggest is rebutted—

(1) Because twenty-two days intervened between the entry of the decree and the allowance of the appeal;

(2) Because no notice was served on them of the intention to apply for the allowance of an appeal;

(3) Because their clients are creditors of the railroad company to a great amount, and the appellants only to a small amount.

(1) The time consumed between the date of the decree and the allowance of appeal was not a very lengthy period, within which counsel, separated from each other and from their clients, (they likewise separated by comparatively long distances and by State lines), might consult with each other as to the proper step next to be taken.

If the trustees, who are now so eager for a sale, and impatient for the day fixed therefor to come around, had moved with anything like the promptness of the appellants, all questions now unsettled might long since have been settled, and this litigation at an end.

On July 31, 1885, in refusing the petition of Rawle,

Trustee, to have the railroad turned over to him, the court below said (p. 169): "A bill is now pending in this court, filed by the Trustee in the second mortgage, praying for a foreclosure of that mortgage. *Proper amendments of that bill, and a vigorous prosecution of it to a* FINAL HEARING, and a conjoining sale of all the property of the company under both mortgages, will remove all objections to a sale."

Almost a year after this time, on June 12, 1886, Rawle, Trustee, filed his cross bill, and within *six days* thereafter the Trustees jointly moved for authority to sell, without having had a single material question of fact, many of which were in dispute, determined, or any inquiry made as to the relative rights of the parties in the subject matter of the sale.

Measured by the standard of the trustees, appellants have acted, we submit, with commendable promptness: "*A vigorous prosecution to final hearing*," of the Devereaux bill, would have disposed of every question in the case within the limit of the year's idleness on the part of the trustees.

(2) No formal notice was required by law to counsel that an appeal would be taken. Informal notice they had at the time the decree was entered.

(3) We deny that appellees are creditors to the extent that they claim, and say that if the bonds dishonestly issued to them and dishonestly held, be cancelled, our debt is half as large as theirs.

The appeal was taken within the time and in the mode prescribed by law, and for the purpose of righting what is conceived to be a serious wrong attempted to be inflicted upon the appellants

In connection with the foregoing argument we submit that it was well taken.

III. As to the question of jurisdiction.

Counsel for appellees say (p. 23 of their argument):

"The sole question, then, in dispute between the appellants and the appellees, so far as this appeal is concerned, is, was the decree of the court below, in ordering the sale for January 25, 1887, *before* passing upon finding the amount of bonds outstanding, and also the extent of the lien of each mortgage, erroneous?"

Whether that be the *only* question or not, it is at least one of the questions in dispute, and it is so far vital, as to be decisive of the present controversy.

To repeat the language of Mr. Justice Matthews in C. & V. R.R. Co. vs. Fosdick, heretofore cited, "it is obvious that the finding of the amount due, for non-payment of which, according to the decree, the mortgaged property is ordered to be sold, *is the foundation of the right of the mortgagee further to proceed, and a substantial error in that finding must, on appeal, vitiate all subsequent proceedings.* Unlike a calculable error in the amount of a personal judgment, which may be cured by a *remittitur*, it is otherwise incurable; for, as it is an illegal exaction, made as a condition for preserving the rights of the mortgager in his estate, and, if executed, depriving him wrongfully of them, it propagates itself through all subsequent stages of the cause."

If it be urged that the appellants are bondholders, and not the railroad company defendant, we answer—

(1) That we also have title to the premises condemned to sale; and, besides—

(2) To quote again from Mr. Justice Matthews: "In Clark vs. Reyburn, 8 Wall. 318, a decree of strict foreclosure, which contained no finding either of the fact or amount of the alleged indebtedness, and gave no time within which to pay or redeem, was reversed on these grounds, *although the bill was taken pro confesso as to the*

parties having the entire beneficial interest, and contained an averment of the precise amount of the mortgage debt then due. The same consequences undoubtedly would have followed if it had been a decree of foreclosure and sale, instead of a strict foreclosure; and the error is as fatal, where a larger amount than is actually due is ordered to be paid, as where there is a failure to find what amount is due."

How can this court affirm a decree, when in the face of the record it is apparent that a dispute exists as to the correctness of the amount of default? where the decree itself and its postscript reveals the existence of this same controversy?

To conclude—

1. The decree appealed from is final for the purposes of an appeal.

A. It is a decree of sale which divests titles, and such decrees are *ex vi termini* final decrees. By construction of law, without respect to the actual fact, thereby "the merits of the controversy are finally settled, and the subsequent proceedings are simply a means of executing the decrees."

B. It is a decree which declares—(*a*) the fact of default; (*b*) the nature of the default; (*c*) the extent of the default; (*d*) the amount due on account thereof; and (*e*) orders a sale. It matters not that these findings are by a postscript to the decree made *provisional*. For the purposes of an appeal they are absolute.

2. There is nothing in the nature of the claim made by the appellants, in the grounds on which it is placed, or in the circumstances attending the appeal, to indicate that it was not honestly taken and not for the purpose of delay.

3. The decree is not a proper one to be affirmed.

It exposes property in which the appellants are interested to a sale in advance of a determination of the rights of conflicting lienholders thereto, and the extent of the liens thereon.

It is based on a finding of facts which are in dispute, and on which no evidence has been given.

It is contradictory in its terms.

JOHN DALZELL.

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—IN THE—

SUPREME COURT

OF THE

UNITED STATES.

No. 1317, OCTOBER TERM, 1886.

THE FIRST NATIONAL BANK OF CLEVELAND, OHIO; THE MAHONING NATIONAL BANK OF YOUNGSTOWN, OHIO; WICK BROTHERS & COMPANY; THOMAS H. WELLS: THE FIRST NATIONAL BANK OF GREENVILLE, PENNSYLVANIA; AND THE SECOND NATIONAL BANK OF ERIE, PENNSYLVANIA, APPELLANTS,

versus

JOHN M. SHEDD, *Trustee*, AND HENRY RAWLE, *Trustee*.

BRIEF

OF SOLICITOR FOR APPELLANTS ON THE MOTION OF APPELLEES TO DISMISS APPEAL AND AFFIRM DECREE.

R. B. MURRAY,

Of Counsel for Appellants.

—IN THE—

Supreme Court of the United States.

No. 1317, OCTOBER TERM, 1886.

THE FIRST NATIONAL BANK OF CLEVELAND, OHIO; THE MAHONING NATIONAL BANK OF YOUNGSTOWN, OHIO; WICK BROTHERS & COMPANY; THOMAS H. WELLS: THE FIRST NATIONAL BANK OF GREENVILLE, PENNSYLVANIA; AND THE SECOND NATIONAL BANK OF ERIE, PENNSYLVANIA, APPELLANTS,

vs.

JOHN M. SHEDD, TRUSTEE, AND HENRY RAWLE.

Appeal from the Circuit Court of the United States for Western District of Pennsylvania.

ARGUMENT OF R. B. MURRAY, ONE OF THE SOLICITORS FOR APPELLANTS ON THE MOTION FILED BY APPELLEES TO DISMISS THE APPEAL MADE IN THIS CASE.

STATEMENT OF FACTS.

The appellees ask to have this cause dismissed, because they say, that it is not such a final decree as is contemplated by Section 692 of Revised Statutes of the United States, and claim, that it is simply and only an interlocutory decree.

On an examination of the motions filed, page 91, and the decree entered, page 126 of the printed Record, the Court will find, that the decree, from which the appeal was taken was entered upon, the motion filed by each of the appellees, asking for a *decree of foreclosure of the deed of trust and mortgage to him*, and also for a *decree authorizing and empowering each*, under the power of sale to him given in the deed, of trust, to sell the property of the Defendant Company.

No evidence was offered by either of the parties and the motion was heard upon the files of the case alone as appears by the entire record.

The Court will see on page 127, that just previous to the first finding, that the wording of the decree is as follows:—

"And the Court having considered the premises, do now order, adjudge and decree as follows:"

"(1st.)" Then follows a description of the property, and in the second paragraph on page 132 of the record, the Court orders, adjudges and decrees "That under the terms of said mortgage, that said Shenango and Alleghany Railroad Company did grant, bargain, sell and convey and tranfer unto the said Henry Rawle, Trustee * * * * all and singular the continuous Railroad, extending from its western terminus, the junction with the Erie and Pittsburg Railroad in the Township of Salem in the County of Mercer and in the State of Pennsylvania, southeastwardly for the distance of forty (40) miles to a point in the County of Butler in said State, both partially constructed and partly unfinished

and then in process of construction, or thereafter to be constructed and finished, *between the points aforesaid*, comprising the line of the said Shenango and Alleghany Railroad, including all the railway and rights of way, depot grounds and other lands owned by or held by the said company; all depots, stations, houses, engine houses, car houses * * and other buildings and all engine shops or other shops, held or acquired for use in connection with *said Railroad* or the business thereof, and including all locomotives * * and other rolling stock or equipment and all machinery * * and material for constructing, operating, repairing or replacing the *said Railroad* or any part thereof or any of its equipments or appurtenances, whether then held or thereafter acquired, and any lateral or branch roads with their appurtenances that may be hereafter constructed thereby or come into the possession of the Company along the line of the *aforementioned forty* (40) *miles* of main line or connected therewith."

As to the finding thus made the Court will find the extent thereof put in issue by the 5th paragraph of Appellant's answer, page 93.

On page 133, the Court finds, "Among other things, it was provided in and by the said mortgage or deed of trust to the said Henry Rawle, Trustee, that in case default should be made by the said Shenango and Alleghany Railroad Company in the payment of any interest on any of the said bonds, covered by the said mortgage, and if default should continue for the period of six months, that then it should be lawful for the said Trustee to enter in and upon and take possession of the

said mortgaged property, and that it should also be lawful for the said Trustee upon each default either with or without entry, to sell the said mortgaged property or upon the written request of the holders of one-half of the said bonds, issued under said mortgage, then outstanding and unpaid, it should be his duty to sell said mortgaged property; also that it should be the duty of the said Trustee on default being made in the payment of any of the interest of any of the bonds for a period of six months, to exercise and enforce the rights of the bondholders under the said mortgage and the said Henry Rawle, Trustee, upon the request in writing to the said Trustee to do so by the holders of not less than Three Hundred Thousand (300,000) dollars of said bonds."

On page 134, the Court "do further find, adjudged and decreed that the said Shenango and Alleghany Railroad Co., have defaulted in the payment of the interest on all of the said bonds, aggregating to the amount of One Million (1,000,000) dollars at the following times: Of the interest maturing on the first day of October, 1884, the total amount of which at the face value of the bonds aggregates Thirty-five Thousand (35,000) dollars; the total amount of interest due on the first day of April, 1885, the total amount of which at the face value of the bonds aggregates the sum of Thirty-five Thousand (35,000) dollars that the said Shenango and Alleghany Railroad Company have also neglected and refused on demand made to pay any of the interest due on the first day of October, 1885, amounting in the aggregate the sum of (Thirty-five Thousand (35,000) dollars, and also the interest due on the first day of April, 1886

amounting in the aggregate to the sum of Thirty-five Thousand (35,000) dollars and that said default still continues." Thus finding that the Railroad Company has defaulted on its bonds to the amount of One Hundred and Forty Thousand (140,000) dollars of interest and the default of the One Hundred and Five Thousand (105,000) dollars has continued for a period of over six months.

On page 134, the Court finds, orders and decrees that "In accordance with the provisions of the said recited mortgage the holders of bonds * aggregating in amount more than one-half of all the bonds issued under * said mortgage * did present their written request to the said Henry Rawle, Trustee, that he should proceed and sell * the said mortgaged property. * the then holders of the said bonds, aggregating in amount more than one-half of the bonds *outstanding* and covered by the mortgage, were also then and there, the owners and holders of all the interest warrants or coupons belonging to all of the said bonds. * That the holders of said bonds, secured by the said mortgage, amounting in the aggregate to more than three Hundred Thousand (300,000) dollars of the said bonds * * * did also present to said Henry Rawle, Trustee, their written request, that he as Trustee aforesaid, would immediately institute proceedings in equity for the collection of the principal and interest of all the bonds, secured by said mortgage and also for the foreclosure of the said mortgage, or deed of Trust."

The Court will here observe that the record nowhere discloses any proof of any written agreement in either

of the forms as above found in the decree, and that all the above was put in issue and denied by paragraph (6) of Appellant's answer, page 94 et seq., and the Court will also observe that no time is given wherein to pay any of the amounts, found due upon said defaults.

The Court will also find that each and all the foregoing findings were objected to by Appellants and exceptions taken to the said findings, page 141 of the Record.

On page 136, the Court finds that by the mortgage, to Devereux, the said Company "did grant, bargain and sell to the said J. H. Devereux, his successors, the entire railroad, built and to be built by the said Shenango and Alleghany Railroad, from its junction with the Atlantic & Great Western Railroad Company near the town of Greenville, in Mercer county, Pennsylvania, to the Alleghany Valley Railroad, on the east side of the Alleghany River, together with all its branches, extensions, side tracks, switches and turnouts to be built, and also all the land, rights, franchises and appurtenances, thereunto belonging, and all engines * * * and personal and real property * * of every name and nature, connected with or belonging to the said Company, on or along its said railroad and used by it * * whether said property is now in existance or shall hereafter be built or constructed and whether said property has now been acquired * or shall be hereafter acquired by the said Company, and also all the corporate rights and franchises of the said Railroad Company."

On page 137, the Court finds and decrees "that there were issued by said Shenango and Alleghany Railroad Company * bonds aggregating in amount Three Hundred

and Seventy-five Thousand (375,000,) and that the same are all *outstanding* * that no interest whatever has been paid on any of the said *bonds outstanding*, but that the said Company continuously, from the first day of January, 1878, down until this time, has refused and neglected to pay any of the coupons of the said bonds, although due demand for the payment of each and all of said bonds was made at the place where said coupons were made payable and that said default in non-payment of interest has continued for a period exceeding eighteen months, and that the holders of *all* the *outstanding* bonds * have elected and determined, that the principle of the said bonded indebtedness shall become due and payable forthwith."

It will be observed that this is a finding that Apellant's holding $175,000 of the Devereux bonds have made the election aforesaid, which fact every line of the record contradicts.

"This Court does further find, adjudge and decree, that said John M. Shedd, Trustee, is entitled, under the provisions of said mortgage to proceed and foreclose said mortgage * * and is also entitled and authorized under the terms of the said mortgage and the facts hereinbefore found by this Court, after having given notice in writing and publication, as provided in the said mortgage to sell at public auction * * * the entire property * * covered by the said mortgage and to execute to the purchaser * a full, complete and legal conveyance for the same."

By paragraph (5th) on the same page, the Court

"further finds, adjudges and decrees, that there are now *outstanding* and secured by the said mortgage to the said Henry Rawle, Trustee, bonds, aggregating to the amount of their face value One Million (1,000,000) dollars, that the interest, coupons or warrants for the payment of interest, from the first day of October, 1884, down to date, are also due."

The Court does further find, adjudge and decree, "that there are *outstanding*, secured by the said mortgage to the said J. H. Devereux, Trustee, bonds, aggregating in amount Three Hundred and Seventy-five Thousand (375,000) dollars, that all interest warrants or coupons for the payment of interest from the date of said bonds down to this date, are also due."

The Appellants in their several answers, aver, that there was not *outstanding* One Million (1,000,000) of said bonds, but no less than Six Hundred Thousand (600,000) thereof have been paid and that the holders thereof are Directors of the Company and hold the same through their fraudulent acts as such Directors, and that the same has been more than paid. See paragraph (6) and (7) of their respective answer, pages 94, 100, 105, 111, et seq.

The Court on page 138 "finds, adjudges and decrees, that there are *outstanding*, receiver's certificates, issued by authority of this Court, amounting in the aggregate to One Hundred and Fifty-five Thousand Eight Hundred and Forty-nine Dollars and Eighty-seven Cents ($155,849.87,) which sum is due and payable, and that said Certificates, together with the costs, charges and lawful expenses in said cause, and the costs, charges

and expenses and liabilities of the Receivership, are entitled to be paid out of the proceeds of the sale *in the first instance*, and are to be deducted therefrom before the payment of any dividends upon the bonds, secured by said mortgage or either of them."

The validity of said certificates is questioned in each of the answers of Appellants, paragraph (10) on page 102 et. seq., and the Record does not disclose a particle of proof as to the amount thereof, nor was any proof actually introduced on the hearing, nor was any time given wherein the same might be paid and save the sale of the property.

"The Court authorizes and empowers the said Henry Rawle, Trustee, under the provisions of said mortgage to him, to proceed and sell all the property covered by said mortgage at public sale," paragraph (6) page 138 of Decree. "The Court authorizes and empowers John M. Shedd, Trustee, to do likewise," paragraph (7), page 138.

It will be observed that the Court orders that a sale be made, not only as a foreclosure of the morgtgage but as a sale under the terms of the mortgage as to default, and it does not simply permit a sale under the mortgage by reason of default, but orders and decrees it as Court of Chancery.

In paragraph (8), page 139 of the Record, the Court "finds, adjudges and decrees, that all of the property of the Railroad Company is subject to a lien of either of said mortgages," and *also to the outstanding* Receiver's Certificates.

In paragraph (9), page 139, the Court orders and decrees "that all of the said property of the Defendant Company shall be offered as whole, under and by virtue of the powers of sale in the said mortgage to Henry Rawle, Trustee, and under and by virtue of the said mortgage to said J. H. Devereux, Trustee, of whom John M. Shedd is now the successor, and under and by virtue of *all the authority and power vested in this Court as a Court of Chancery, to order the sale of the said property under the facts and circumstances of this case.*"

The equity of the case as made by the Trustees, is clearly questioned by paragraphs (6) and (10) of each of the answers, pages 94, 96 et seq.

It is certainly a matter, that cannot be questioned and which as clearly appears from the pleadings as any other fact, that the Rawle mortgage covers no part of the property described in the decree, except forty (40) miles of main line, running from the Junction at Shenango to a point forty (40) miles southeast thereof; and the personal property, which was in existence on the first day of April, 1869, and which may have been purchased to replace the same. See Resolution of Board of Directors, copied into the mortgage, page 157 of the Record.

It is further a matter, that cannot be disputed upon the Record in this case, that the Devereux mortgage covers the entire property of the Company and is the first lien upon the whole of it except the said forty (40) miles of the main line and the personal property in existence, April 1st, 1869, or such of it as may have been

replaced; and by reference to the schedule of the property in the decree on page 127, it will appear that the Devereux mortgage covers about thirty-one (31) miles of main lines, switches and side tracks and other real estate and personal property upon which the Rawle mortgage is no lein whatever

On page 140 of the printed record, the Court orders, adjudges and decrees "(B) That the persons owning and holding Receiver's certificates * * * * * * may use the same in the payment of the purchase money and the said certificates shall be received by the said Trustees and Masters as equivalent to cash.

"(C.) As to so much of the balance of the purchase money as may exceed the cash payment and the Receiver's certificates, Rawle bonds and coupons, and Devereux bonds and coupons, may be used by the purchaser, as cash, to the extent of the estimated dividend payable on the said bonds and coupons held by such purchaser out of such excess.

In estimating the said dividend *provisionally* the holders of Rawle bonds with coupons shall be considered as entitled to receive sixty (60) per cent. of the fund and the holders of the Devereux bonds and coupons shall be considered entitled to receive forty (40) per cent. of the fund." This is provisional only and can be done only upon giving bond to repay in accordance with any future accounting by the Court.

It will be observed in that connection that the record clearly shows that the property upon which the appellants have a first and only lien, is, in proportion to the

amount of the lien, of equal value, to that owned by the Rawle mortgage and that too, calling the Rawle mortgage $1,000,000, instead of $400,000, which it truly and justly is. As illustrative of the relative positions, the proportion stands, closely approximated, thus: Thirty-one miles of main track, branches and sidings and much the largest portion of the personal property with an incumbrance of $375,000, to 40 miles of main line and part of the personal property with a real incumbrance of about $400,000—and a claimed incumbrance of $1,000,000.

ARGUMENT.

That this Decree is such a final decree as is contemplated by Sec. 692 of Revised Statutes of the United States, as that Section is construed by this Court, it would hardly seem that any one familiar with the decisions of this Court, would, for a moment, hesitate in saying that it was.

From the whole case, it will appear that the contest is, as to whether or not, the property should be sold. By the terms of the decree, all the disputed questions of fact necessary to authorize a sale under the two mortgages, as well as those not in dispute, are each and all finally found and determined by the Court, against the Appellants, and the property which is the subject of the controversy is ordered to be sold, and under the sale the properties and interests thereof, will pass forever from the power of the Court. The properties are to be sold as whole, and for one price, while it is clear, that upon certain portions of the property, the mortgage of one of the Trustees is no *lein* whatever. The

entire main line northwestwardly from Shenango to Greenville and the entire line from a point forty (40) miles south east from Shenango is not covered by the *Razele* mortgage, nor of the branches, nor is any of the after acquired property covered by the Rawle mortgage, except, perhaps the switches, in connection with the said forty (40) miles; now if this property is sold with the other property, at one price and at the same time, no means is provided by which any one can hereafter determine what price each brought, and what sum the respective mortgages are entitled to receive

Much is said in Appellees brief as to no issue having been taken on certain questions, and therefore the finding and decree of the Court upon these questions could not form the foundation for an appeal or help out the jurisdiction of this Court.

It is hardly worth while to pay much attention to this part of Appellees argument, in as much as this Court has distinctly held in The Pacific Railroad Company vs. Ketchum, 101 U. S. 289. "That an appeal will not be dismissed upon the ground that the decree from which it was taken, was rendered by consent." The record in this case distinctly shows, that each and every finding of the Court in this case was objected to by the Appellants. In the case last cited, the Court, says on page 295 that "by Sec. 692 of Revised Statutes, that an appeal should be allowed from all final decrees in the Circuit Court, when the matter in dispute exceeds Five Thousand ($5000) dollars; and that this Court shall receive, hear and determine such appeals. This makes appeals to this Court within the prescribed limits, a

matter right, and requires us when they are taken to hear and decide them."

The case of Whiting vs. the Bank of U. S. 13. Pet 6. is a case wherein the Appellants sought to have a certain decree of foreclosure and sale set aside by this Court. An objection was made, that it was not such a case as entitled * the party to an appeal. The Court in the last division of the syllabus says, "A decree of foreclosure and sale is final upon the merits of the controversy; an appeal lies therefrom." On page 15 the Court asks the question "whether the decree of foreclosure and sale is to be considered as a final decree in the sense of a Court of Equity, and the proceedings under decree a mere method of enforcing the rights of the creditor and, for the benefit of the debtor:? or whether the decree is to be deemed final only after the return and confirmation of the sale by the decretal order of the Court." The Court says, "We are of opinion that the former is the true view of the matter. The original decree of foreclosure and sale was final upon the merits of the controversy; the defendants had the right to appeal from decree, as final upon those merits, as soon as it was pronounced, in order to prevent an irreparable mischief to themselves. For, if the sale had been completed under the decree, the title of the purchaser under the decree would not have been overthrown, or invalidated even by the reversal of the decree; and consequently the title of the defendants to the lands would have been extinguished; and their redress upon the reversal would have been of a different sort from that of the restitution of the land sold. In Ray vs. Law 3, Cranch, 179, it was

held by this Court that a decree of sale of mortgaged premises, was a final decree in the sense of the Act of Congress, from which an appeal would lie to the Supreme Court."

The next case which seems to be a leading case on this subject, is the case of Forgay vs. Conrad, 6, How. 202. The doctrine as well as the words used by the Court in this case seems to have met the approval of all the Judges of this Court, ever since its announcement.

The syllabus applicable to this case is as follows:

"Where the decree decides the right to property and directs it to be delivered up or sold * * * and the complainant is entitled to have such decree carried into immediate execution, this is a final decree, from which an appeal lies." In the opinion on page 204, the Court says, "If these appellants, therefore must wait, until the accounts are reported by the Master and confirmed by the Court, they will be subjected to irreparable injury. For the lands which * * they claim will be taken out of their possession and *sold*, and the proceeds distributed among the creditors of the bankrupt before they can have an opportunity of being heard in this Court in defence of their rights. We think upon sound principles of construction as well as upon the authority of the cases refered to, that such is not the meaning of the acts of Congress. And where a decree decides the right of property in contest and directs it * * * to be sold and the complainant is entitled to have such decree carried into immediate execution, the decree must

be regarded as a final one to that extent and authorized an appeal to this Court."

This and the language above quoted was refered to, approved and affirmed in Winthrop Iron Company vs. Meeker, 109, U. S. 183, as well as a number of well considered cases previous thereto.

In this case the Court has determined every question, made by the amended bill of Shedd, Trustee, and the Cross Bill of Rawle, Trustee, and granted every request of the prayer of each bill, except, that the Court did not order and decree that the said Shenango & Alleghany Railroad Company should pay the amount of the interest now due, and allow a certain time for the payment of the debt and the redemption of the estate. See, prayer on page 68, decree on page 126 et seq. Although many issues were raised by the answers of Appellants, yet the Court has proceeded upon motion only to decide the same; especially is this so as to the amount of bonds *outstanding* under the Rawle mortgage and the default as to the amount of interest and amount of receiver's certificates.

It may be said that it is not *final* because it is the duty of the Court below to determine the extent and priority of the leins before the cause is finally determined. And the Court says, (where property is ordered to be sold) "the decree must be regarded as a final one to that extent * * * * although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by further decree the accounts be-

tween the parties persuant to the decree." Forgay vs. Conrad, 6, How. 204, at the bottom of the page.

On page 134 and 135 of the record in this case, it will appear, that it is found, that the railroad company has defaulted in the payment of interest on all of said bonds, aggregating one million ($1,000,000.) dollars and that the total amount thereof, amounts to one hundred and five thousand ($105,000.) dollars (exclusive of the amount of $35,000, April first, 1886.) and that said default has continued for six months and the said Trustee is therefore authorized either with or without entering upon and taking possession of said mortgaged property to sell the same. The Court finds in effect, that there is due from said railroad company, the sum of one million ($1,000,000.) dollars on the face of the bond and one hundred and forty thousand ($140,000.) dollars of interest and orders the property sold.

Subdivision (7) of the syllabus of Bronson vs. Railroad company, 2 Black, 524, says," A decree for the sale of mortgaged premises is a final decree, from which an appeal lies." The case last cited was one where the decree found there was owing to the complainants five hundred thousand ($500,000.) principal, and sixty-five thousand two hundred and sixty-five dollars and five cents ($65,265.05.) for interest, and ordered the mortgaged premises to be sold, unless the amount found due for interest be paid. There was left undetermined certain exceptions to the Master's report; the Court says on page 531," *This decree is not Final in the strict and technical sense of the word,*" for some thing yet remains for the Court to do. "And cites the case of For-

gay vs. Conrad, and refuses to dismiss the appeal. The fact that all matters in a case are not *completely* determined, has never been held to oust this Court of its jurisdiction on appeal; in Grant vs. Phoenix Insurance Company, this Court lays special stress upon the fact in that case, that no sale had been ordered, and dismissed the appeal.

It has been said by this Court that a decree is final, when all that is left to be done, is such ministerial duties as will secure the full benefit of its complete execution to Appellees; it is possible for the right of more than one appeal to exist and to be perfected in the same case. Appeals have been sustained by this Court from decrees entered upon reports of referees as to amounts found due and ordered to be paid, among other rights and judgments, which did not finally determine all the matters in controversy; of course we understand, that a decree is not final where money *the subject of controversy* is directed to be paid unto Court, there to abide the further determination of the Court; in such a case the Court is simply exercising its ordinary powers to preserve the subject of the controversy, and specific property is frequently ordered to be delivered to a Receiver under the exercise of the same power of the Court. And property held in trust has been ordered to be delivered to a new Trustee, appointed by the Court for like purposes, but we think that no case can be found, where the decree orders the property to be changed and the title thereof to pass out from the jurisdiction of the Court and converted into money, which has been determined to be an interlocutory decree only, unless the

property has been such, as is considered perishable property, and no case will be found where real estate, such as constitutes a line of railroad has been deemed perishable property. The only claim of Appellees to the right to have a sale made at this time, is, that the operation of the road by a Receiver heretofore appointed herein is attended with loss, (a fact which we do not admit) but were it so, it is no more than happens to all property subject to litigation, for no real property in actual use can be deemed to be as free from loss as if it were not in litigation and the appointment of a Receiver to take charge and operate the railroad was for the purpose of preserving the property in as good condition as possible, until all matters in the case were completely determined; and the exercise of that power has usually been deemed sufficient with regard to real property, and when a decree has been made, authorizing the title of that property to be passed from the jurisdiction of the Court, it has been considered as final to that extent, and subject to appeal.

The case at Bar is similar in principle to the case decided in 7th. Wallace, 575, Railroad Company vs. Bradleys; in that case, The Washington, Georgetown and Alexander Railroad Company, filed in 1863 a bill to enjoin the City of Washington and J. and A. Bradley, Trustees, from making a sale of certain property, conveyed by the Company in the mortgage to the said Bradley's, as Trustees, and under which the Bradleys were about to sell the property, to pay the mortgaged debt; an injunction was accordingly granted, but after various proceedings on both sides, a decree was entered on the 6th day of February, 1869, which ordered the

injunction to be dissolved, and directed a sale by the Bradleys, * according to the deed of trust and the bringing of the proceeds into Court to abide its further orders. This case is similar to Appellants case, in that it directs a sale by the Trustees of the Railroad Company's property according to the deed of trust and orders "The proceeds to be brought into Court to abide its further orders." The case as reported does not disclose what issues were made, as to whom the proceeds belonged, but it is safe to presume that no order would have been made "To bring the proceeds into Court to abide its further orders," if such issue had not been made. In the case at Bar, the Court finds the Railroad Company in default as to all matters which would allow the Trustees to sell under the mortgages, and also all defaults which, (the Court thinks) are necessary to sell under the powers of the Court as Court of Chancery. In the case last cited, this Court says, "that it might not have been a final decree, if the decree had been limited to the dissolution of the injunction, thereby permitting the Trustees to sell under their trust." This is so because if the Trustees were only permitted to exercise their rights of sale under the mortgage, parties interested would be likewise permitted to institute any proceeding, which might be proper by a separate case against the Trustees so undertaking to exercise their powers, but the Court ordering the property to be sold and coupling with it the order to bring the money into Court gives finally to the nature of the decree notwithstanding, "the proceeds are to be brought into Court to abide its further orders."

It would therefore seem that the order of the Court

below, as expressed in its entire decree and summed up in Division (9) page 139, is a final order within the acts of Congress. There are certain peculiarities about this decree, which makes it final in its nature. It exhibits a studied effort to effectually bar any and all persons from ever hereafter questioning the title of the property in any Court and laborously seeks to avoid allowing the Railroad Company or those who hold under it from ever, in any manner making good the default, which is found against the company, and prevent a sale of the property. Persons interested might be willing to make good the default and thus prevent a sale, if an ordinary decree in Chancery had been entered, to-wit: allowing time within which to make good the default found. Henry Rawle, Trustee, evidently has a first lien on only a portion of the property, yet the decree orders him to sell not specified property but "all the property in the terms covered his mortgage;" thus leaving the purchaser, under his mortgage, in doubt as to exactly what he would purchase. It is admitted, that, Shedd, Trustee, has a lien upon the entire property subject to the first lien of Rawle, Trustee on forty (40) miles of main line only; and a portion of the personalty. The property consists of both real and personal property and yet the Trustees are to sell in bulk and together, the whole property. What will Rawle, Trustee, sell? And how will the Court hereafter know what the property has brought? What will Shedd, Trustee, sell and how much of the purchase price, will his sale be considered as having brought? Those are questions, which neither the Court below, nor the learned Counsel for Appellees were willing to wrestle with, although more

than one year was given to them, in which to devise a feasable means of selling this property before a determination of those facts: hence, the result will be, if this sale is allowed to proceed, the property and its title will be pass from the power of the Court, and worse than Babel confusion follows, as to what shall be done with the money. It might be properly determined hereafter, what specified portions of the property each of the mortgages covered as a first lien, and a second lien, but as to what price, the various items of property brought, as a part of the consideration, no Court will ever afterwards be able to determine, and thus the decree does most effectually and finally determine the controversy as to the ownership of the entire property and the distribution of the fund.

The Appellees, in their Paper Book (page 10) quote from the case of Farmers Loan and Trust Company vs. Waterman as follows: "Only parties to the decree can appeal, if a party to the suit is in no way affected by what is decreed, he can not be said to be a party to the decree." And proceed to say that, however, final this decree may be as to the railroad company, it is immaterial, because that party does not appeal: by this we would infer, that the interests of the appellants were entirely distinct from that of the railroad company, and that an order or decree which would effect the railroad company, could not effect those parties, who hold bonds secured by a mortgage made by it; that might be true, if the holders of the bonds were not parties to the litigation, but being parties, no judgment or decree can be taken against the Railroad company in relation to the mortgage securing the bonds, that does not effect the

holders of the bonds and bind them. It must not be forgotten, that the title and interest, in the railroad company's properties, of the appellants, come through the railroad company, and whatever effects its title and interest likewise effects the appellants. If the title and interest of the railroad is entirely swept away by a decree, final in its character, it likewise takes away the title of appellants. The sale of the property from the Railroad company upon default, according to the terms of the mortgage, to that extent, is a sale of the interest and title of the holders of the bonds. The two cannot be separated, and what is final as to the railroad company is final as to the appellants.

It is said there are no disputes between Shedd, Trustee, and Appellants.

The motion of Shedd, Trustee, asks for a decree of foreclosure of the deed of trust and an immediate sale of the property under the powers confered upon him by the mortgage. (Page 90.)

The appellants (Paragraph 10, of their respective answers Page 96 et seq.) say "That owing to disputes existing as to amount of the first mortgage bonds outstanding, and the extent of the lien thereof, and disputes as to the extent of the lien of the second mortgage bonds have arisen and disputes have arisen as to the amount and validity of the Receiver's Certificates, that it is necessary in order to protect its rights as a lien creditor, to have a Court of competent jurisdiction determine the amount of said bonds outstanding and the extent of the lien thereof as well as the amount and extent of the lien of said *second mortgage bonds*, and

also the amount and validity of the said Receiver's certificates before a sale of said property."

The Appellants have only asked what this Court has said in a number of cases should be done before an order of sale should be entered; and this is one of the matters which appellants have so earnestly contended for and which they claim are substantialy rights and all of which have been swept from them by this decree. In Railroad vs. Swasey 23, Wall. 409 it is said that "to justify such a sale, without consent, the amount due upon the debt must be determined and the property to be sold, ascertained and defined." While a decree of the Court finding the amount due upon the mortgage debt, might not be a final decree or a decree defining the property to be sold as preparatory to a sale may not be a final decree subject to appeal, or both together may not be final in that sense, yet the Court say Grant vs. Phoenix Insurance Company, that such findings followed by an order of sale, would make it final for the purpose of an appeal. In the case at bar, it may be presumed, however irregular it has been done, that the property to be sold has been ascertained and defined and, however craftily and irregularly the finding of one hundred and forty thousand ($140,000.) dollars of interest to be due and of one hundred and fifty-five thousand eight hundred and forty-nine dollars and eight-seven cents ($155,849.87.) of Receiver's certificates are found to be due and payable, all are findings of amounts due, and are presumed to be such findings as will form the basis of a decree, ordering a sale of the property, and therefore the decree is in effect final to such an extent as to be the subject of appeal.

This Court has on several occasions admonished the Circuit Courts, that decrees of this kind ought not to be made but "when accounts are before the Court, every matter in dispute should be adjusted in one final decree, so that if any party feels himself agrieved, the whole matter would be brought here and decided on one appeal, and the objects and the policy of the Act of Congress upon this subject carried into effect." But as appears from the Record, (Page 42, as alleged in the petition asking to intervene and nowhere denied), that managers of the railroad company and the Trustees under the mortgages, were previous to the decree, converted to a scheme, which required the immediate possession of the road to be turned over to a certain party holding Rawle bonds and Shedd bonds in which no other creditors of the road was to be considered; and they could not await the order of the Court as to the accounting.

The answers of the Appellants aver that "Disputes have arisen as to the amount and validity of Receiver's certificates," "and that in order to protect their rights, it is necessary to have a Court of competent jurisdiction determine the amount and validity of said certificates before a sale of said property." And yet the Court has decreed (Page 138) that there are *outstanding* Receiver's certificates amounting in the aggregate to the sum of one hundred and fifty-five thousand eight hundred and forty-nine dollars and eighty-seven cents ($155,849.87) and orders the entire property to be sold, and orders that this sum be paid out of the proceeds of sale before any other claim. This certainly is a final order, which even the Counsel for Appellees would hardly be

willing to say did not effect finally and forever the interests of the Appellants and has the quality of finality sufficiently definite to come within the rule as claimed by them; and as to the conclusiveness of this proposition, we cite Hovey vs. McDonald, 109, U. S. 150, and Williams vs Morgans et al. Trustees, 111, U. S. 684.

The Counsel for Appellees say (Page 26) "It must not be overlooked that it must be final as between the appellants on the one part and Rawle and Shedd, Trustees, on the other part."

On (page 42) of the record by the petition to intervene it will appear as one of the grounds of the Appellants for asking leave to intervene, was the fact that the said "Shedd Trustee, was committed to a course, and was acting in a manner, calculated to injure them in their security, to-wit: that there is on foot a certain scheme, which contemplates" a united and friendly foreclosure" and sale of the entire road under the two mortgages, "and that there are certain questions as to the extent of the lien of the Rawle mortgage and the number of bonds *outstanding* and the amount that is due thereon which should be determined in this action, and which the petitioners are informed and believe said Shedd does not intend to raise, and it raised, will be determined against the validity and amount of a large portion of said bonds. * * * That said Shedd, Trustee, is committed to have the interest in said railroad covered by the conveyance to Devereux sold without a determination of these questions, and by so doing the petitioners say, that the value of their security will be greatly diminished. First, by not being able to

know the exact extent thereof; and Secondly, by being unable, by reason of the uncertainties existing as to the extent of their lien to protect their property from being sacrificed at the sale."

The Court under this petition allowed Appellants to intervene in order to act for themselves in the matter and protect their rights against what seemed to be a combination against them, entered into by both Trustees. The Appellants come into the case, thenceforward they were parties, seeking without the aid of their trustee, to have determined by the Court their rights as holders of bonds secured by mortgage, upon all the property in controversy, and whatever decree or order was made, disposing of the property covered by the mortgage was a final decree as against them.

And now before concluding on this branch of the case, why is not the decree final in the sense of allowing an appeal for the following reasons:- Shedd, Trustee, in his amended bill (paragraph 11, page 50), says, "that disputes have arisen between the holders of bonds secured by the aforesaid mortgage executed to Henry Rawle, Trustee, and the holders of the bonds secured by the mortgage * * to J. H. Devereux and other creditors of the said railroad company, as to the extent of property covered by the lien of the aforesaid mortgage to Henry Rawle, and as to the priority of said lien, it is claimed by the said Rawle, Trustee, and by the bond holders under the mortgage given to him, that the said mortgage is a lien upon certain portions of the said rail road in addition to the forty miles hereinbefore mentioned, the contrary whereof your orator charges to be true;

and it is claimed by said Rawle, Trustee, that the lien of the said mortgage is prior to all other liens upon so much of the railroad as is covered by it. Whereas it is claimed by Thomas P. Fowler, as Receiver, that the said lien is subject to and is to be postponed to the amount due upon Receiver's certificates:" * * and says, "Wherefore your orator shows to the Court that the extent of the property covered by the said mortgage to Rawle, Trustee, and the priority of the lien thereof are each and all undetermined and in dispute, and that no advantageous or just sale of the said railroad property could be made subject to the said mortgage in as much as the purchaser at said sale would not, with certainty, be able to know precisely what property would be acquired by them or what liens, if any, might exist upon the same in their hands * * *."

And the prayer of this amended bill asks "that an account may be had and taken in the premises of the amount of the outstanding bonds, * * * that the bonds secured by said mortgage executed to Rawle, Trustee, and the amount due upon the Receiver's certificates, and the respective priorities of all the incumbrances and charges upon said property or any part thereof * * may be settled and determined." And asks a sale of the property under the power of the Court. By a fair construction of the amended bill it could hardly be claimed that the object and tenor of the bill was other than, to demand a determination of the disputes in the ordinary order as named in the prayer.

The disputes were pleaded as equities and their determination as necessities to an "advantageous and just sale;" and it disputes as to liens and extent of

property are equities against a sale, they continue to be so until determined. These equities are likewise set forth in appellants answers in about the same words. All these equities were determined against Shedd, trustee, and being determined against him were also determined against appellants, for he is still, for some purposes, their trustee, and especially so as to the title of the security; and any order that effects his title effects theirs. Not only are these equities found against Shedd but also against appellants; and further the Court decrees that all the interest accumulating on all the bonds issued since January 1, 1878, is due and by reason of that default the principal thereof has become due; and thus is based a finding upon which to decree a sale. Is this not such a finding and decree as disposes finally of this part of the case?

If a sale is made, can this Court, by a reversal, put the parties in statu quo? and is not that the test of a final decree within the terms of the statute? Would it not be worse than useless to give the right of appeal, if when determined in his favor, the Court was powerless to restore to him all things which he had lost thereby. Therefore it seem clears that that decree is final within the statue, which if carried into execution, places the subject matter of the suit where the Court can not lay its hands upon it, and place the parties in the *exact* position they were in when the erroneous decree was rendered.

It is said by Appellees, "That this appeal is for delay only." The complaint is made, that no paper was filed in the Clerk's office until December 7th, last, it will be

observed that the parties to this appeal live at places widely separated from each other and in different States, and that Counsel, representing them, are separated and resident in different States, that the appeal was allowed, and before bond could be given for supersedeas the amount thereof should be fixed by this Court and the bond thereafter prepared and signed by the different parties, widely separated as they are, all this required time, and yet notwithstanding this, within thirty-two days after the appeal was alowed, the transcript was filed in this Court, and the case was ready for hearing. I will leave this much of the case to the experience and knowledge of this Court to say, whether or not the appeal in this case was not perfected with much more dispatch than is the ordinary practice.

Further the Record discloses that the Appellants made the identical questions in their answers to the Rawle petition, filed May, 1885, which they now make and more than one year was allowed to lapse before anything further was done by him; but as the sequel showed, that the time was occupied in getting the two Trustees together so as to unite in a "friendly foreclosure" and the scheme perfected, by which the property was to be passed out of the hands of the Court, into the hands of a few, who were within the charmed circle, irrepective of the just rights of the minority of the bond holders of both classes.

The Appellees complain that the claims of Appellants amount only to one hundred and two thousand five hundred ($102,500) dollars, while Appellees' claims amount to over Two Million ($2,000,000) dollars and

therefore *their* desires in this case ought to prevail, however much it tends to rob the minority of their just rights. The record fails to disclose the truth of the statement as to the difference in the amounts of the two claims. If we look into the record, it discloses without dispute the claims of Appellants as per bonds held to be one hundred and seventy-five thousand ($175,000) dollars, and the disputed claims of Appellee Rawle, Trustee, to be about four hundred thousand ($400,000) dollars and Shedd, Trustee, two hundred thousand ($200,000) dollars.

It is not at all surprising that parties, having such an exalted opinion as to their position in this suit, should think, that every effort made by persons having only one hundred and seventy-five thousand ($175,000) dollars, should be entitled to *no* consideration, and all their efforts to be protected in their rights, small though they be, should be construed as done, only "TO DELAY" the irrisisible strides of an unreasonable majority, who are seeking to gather this railroad to itself; which it is said is losing money, while in the hands of a Receiver; when, if I may be allowed to refer to the last report of the Receiver, it shows a net increase after the payment of all operating expenses and repairs and replacements of twenty-four thousand three hundred and eighty-six dollars and sixty-two cents ($24,386 62), ending June 30th, 1886, and if the present great increase of the business of the road should continue until this case should be reached on the regular call, the creditors of this road will have great cause to rejoice, for under the careful and honest management of the present Re-

ceiver, it will in all probability have earned sufficient to pay all demands, that may be *justly* due and payable.

The Appellees ask to have the decree affirmed under Rule (6), which provides for the same, when "The question upon which the jurisdiction depends is so frivolous as not to need further argument." It hardly seems, that this request of Appellees is seriously made, but it is joined with their motion to dismiss, no doubt with a view, if possible of having the case advanced and heard upon the merits before the regular call, but if this were possible, it would be very agreeable to Appellants, to enter fully into the argument upon the merits of the case at this time. But we think, that the motion of Apellees for dismissal is "Without color of right" and therefore this Court will not entertain the motion to affirm the decree; and for that reason, we will not undertake to argue fully the case upon its merits, but content ourselves with answering such matters only as are adverted in Appellees' brief.

The Appellees quote PART of the prayer of Appellants' answer only, and omit to state, that there is a prayer for general relief upon the matters stated in the answer.

They state that all that is asked is, that there shall be determined, (1). The amount of bonds *outstanding* in the hands of bona fide holders for value. (2). The extent of the lien of each mortgage should be judiciously determined. And conclude by saying that, that is all that Appellants pray may be passed upon BEFORE SALE.

They can hardly have read all of our answer, for in addition to the above the Court will see by an inspection of our answer, that other issues are made, which require proof and determination of the Court below, to-wit: in paragraph (6) page 94, Appellant's "Deny, that it is said in said mortgage or that it is provided therein, that the TRUSTEE shall sell the whole of said property, but only so much of that mortgaged as shall be necessary to pay *the interest over* due." Denies, that according to the condition of said mortgage, default has been made, as set forth, in Section (6) and (7) or that request for indemnification has been made as therein set forth. Section (6) and (7), page 67, contain the conditions as to default.

It would seem that, that denial would require the Court first to examine into those questions, which should be determined, before any inquiry should be made as to the amount of the default under the Rawle mortgage, which would justify a sale.

The Appellants only ask a sale when it has been determined that such a sale is lawful and not before. The Court is met at the very outset with the proposition, whether it was lawful to order a sale without proof of these matters. The Appellees say, that, "Shedd and Rawle had a clear, legal right to sell under each mortgage, were it not for the possession of the Receiver." If this was so, why were they not content to confine their request for an order to sell under their mortgage without joining with it the request to sell under the power of the Court of Chancery.

And now they ask the question, "This being so, what

right has the Appellants to intervene and say, that before the Trustees executed the legal powers of sale, given them in the mortgage, the Court below must pass upon and determine the amounts of the *outstanding* bonds and the extent of the lien of each mortgage."

It might be true, if the Court had simply passed the property from the Receiver to the other Trustees and then left all the parties to pursue their lawful remedies; but the Court has assumed jurisdiction of the whole case and proposes to hold it and determine every question in it, to the end; and for that purpose has itself determined the default and extent thereof under the mortgages and has found the amount of the Receiver's certificates and has found their priority and ordered the entire property to be sold and the same to be paid first out of the proceeds. Under these circumstances, the Appellants are powerless to apply to the Court for an injunction to prevent the Trustees from exercising their power of sale, so found to exist, and thus this matter is finally determined against them.

It is true that there are questions reserved as to the extent and priority of the liens, but the Court having ordered the property to be sold and authorized the title thereof to be conveyed to the purchaser, places it beyond the power of the Court ever hereafter to determine the questions which are in terms reserved and therefore nothing is left to those who feel themselves agrieved but to appeal and have the error corrected by this Court before the property passes out of the power of the Court, and thus prevent an irreparable injury to

them, which this Court say is liable to happen in such a case.

Take for instance the six miles at the east end of the road and the branches, upon which Rawle, Trustee, clearly has no lien (because at the time of the execution of his mortgage, there was no power to make extensions or branches, this having been obtained by subsequent Legislative action) it being conceded, that Shedd has the first and only lien upon said six miles and the branches. It would be a sorry spectacle to see a Court of the dignity and powers of the CIRCUIT COURT OF THE UNITED STATES undertaking to adjust the amount, which should be allowed to the bond-holders under the Shedd mortgage for this six miles and the branches, without knowing the amount for which it sold, and this same difficulty would arise as to the different items of the personal property.

It is not a matter of discretion but a matter of absolute right, where there is a dispute as to whether certain property is encumbered by a lien or not, or where there is a dispute as to what items are covered by separate encumbrances to have this question determined before a sale, so as to insure to every encumbrancer, the right of protecting his security by bidding at the sale, without involving himself in onerous engagements or being subjected to onerous conditions, and if a decree is made in plain disregard of this rule, it ought to be corrected. It is a very material matter to a party holding first incumbrances on property (as Appellants have through Shedd to a part of this property), not to be deprived of the right of bidding that property up to the amount of

his claim. This Appellants cannot do, when the property is sold together with other property or when his right to priority is left in dispute. Campbell vs. Texas R. R. Co. 2, Wood, 269.

In Jerome vs. McCarther, 94 S. S., page 735, the Court says, "When there is substantial doubt respecting the amounts of the debts due, prior lien creditors, there is obvious propriety in making them parties, that the amount of the charge remaining on the land, after the sale may be determined and that purchasers at the sale may be advised of what they are purchasing."

It seems presumptous in the Appellees to ask for an affirmance of this decree. While it finds that certain defaults have been made in the payment of interest and orders certain Receiver's certificates to be paid finding the amount thereof, and orders the entire property to be sold, yet it nowhere provides that such a sale may be prevented by the payment of these amounts so found. In Clark vs. Rayborn, this Court held "A decree of strict foreclosure which does not find the amount due, which allows no time for the payment of the debt and the redemption of the estate, and which is final and conclusive in the first instance, can not in the absence of some specified law authorizing it, be sustained." 8, Wal. 318. In Chicago vs. Vincennes Railroad Company vs Fosdick, the Court say, page 71, "The order to redeem is a favorite equity and will not be taken away except upon a strict compliance with the steps necessary to divest it," and the Court say on the same page, quoting the Syllabus in Clark vs. Rayborn says, "The same consequences undoubtedly would follow off if it had

been a decree of foreclósure and sale, instead of a strict foreclosure." We therefore contend, that this is not only a final decree from which an appeal is allowable to this Court but that it is erroneous in all its findings and should be reversed and the case remanded to the Circuit Court, to proceed and determine the case in the order and manner as directed in Forgay vs. Howard and Swasey vs. Railroad

R. B. MURRAY.
Solicitor for Appellees.

121-74

JAN 24 1887
JAMES H. McKENNEY,
CLERK.

—IN THE—

Supreme Court of the United States,

No. 1317, October Term, 1886.

The First National Bank, of Cleveland, Ohio; The Mahoning National Bank, of Youngstown, Ohio; Wick Brothers & Company; Thomas H. Wells; The First National Bank, of Greenville, Pennsylvania, and the Second National Bank, of Erie, Pennsylvania, Appllants

Versus

John M. Shedd, Trustee, and Henry Rawle, Trustee, Appellees

Motion on behalf of Appellees to dismiss appeal and also affirm decree, with brief on same.

DUNNING & EDSALL,
GEO. T. BIPHAM.
Solicitors for John M. Shedd, Trustee.
FRANCIS RAWLE,
D. T. WATSON.
Solicitors for Henry Rawle, Trustee.

PITTSBURGH:
J. A. REED, Book and Job Printer, 79 Fifth Ave.
1886.

IN THE

Supreme Court of the United States.

NO. 1317 OCTOBER TERM, 1886.

THE FIRST NATIONAL BANK, OF CLEVELAND, OHIO; THE MAHONING NATIONAL BANK, OF YOUNGSTOWN, OHIO; WICK BROTHERS & COMPANY; THOMAS H. WELLS; THE FIRST NATIONAL BANK, OF GREENVILLE, PENNSYLVANIA; AND THE SECOND NATIONAL BANK, OF ERIE, PENNSYLVANIA, APPELLANTS,

VERSUS

JOHN M. SHEDD, TRUSTEE, AND HENRY RAWLE, TRUSTEE.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

MOTION.

And now, January 24th, 1887, comes the Appellees, John M. Shedd, Trustee, and Henry Rawle, Trustee, by their counsel, and move the Court to dismiss the appeal in this case, because the said appeal is taken from an interlocutory decree or order of sale, and not a final decree, and therefore this Court has no jurisdiction of the same. And the said John M. Shedd, Trustee, and the said Henry Rawle, Trustee, (even if this Court has jurisdiction of the case), move to affirm said decree because, (1) It is manifest the appeal was taken for the purpose of delay only. (2) The questions upon which the jurisdiction depends are so frivolous as not to need further argument. (3) Even if on some point the decree of the Court below is final, yet so far as the decree permits the Trustees Rawle and Shedd to execute their power of sale, it is not final, and as to that the Trustees should be allowed to proceed and sell. (4) In any event, as the Appellants filed no answer to the original bill of Shedd,

Trustee, the said Shedd, Trustee, should be allowed to proceed and sell said property. (5) The said Rawle and the said Shedd, as special Commissioners, should be allowed to proceed and sell the property under order of Court, because the same is perishable—encumbered with liens—concerning the extent of which there are disputes, and because the property is in possession of the Receiver of the Court, and the Railroad Company is utterly insolvent.

STATEMENT OF FACTS.

[REFERENCES ARE TO PAGES OF THE PRINTED RECORD.]

The Shenango and Allegheny Railroad Company is a corporation of the State of Pennsylvania, organized under an act of the General Assembly of said State, entitled "An act to incorporate the Bear Creek Railroad Company," approved March 2d, 1865, and the various supplements thereto. The name of the Bear Creek Railroad Company was by authority of law changed to that of the Shenango and Allegheny Railroad Company. The main line of road as constructed extends from Greenville, in Mercer county, Pennsylvania, to Hillyards, in Butler county, Pennsylvania, a distance of about forty-seven miles. It has various sidings and branches and some rolling stock. In the year 1869, the railroad company being lawfully authorized so to do, made and delivered to Henry Rawle, Trustee, a mortgage dated April 1st, 1869 (the extent of the lien of which is in dispute), to secure payment of bonds of the said Company, maturing April 1st, 1889, and aggregating in amount One million dollars, dated April 1, 1869, with semi-annual coupons for the payment of interest at the rate of seven per cent. per annum in April and October of each year. The mortgage was duly recorded on the 17th day of April, 1869, in the Recorder's office of the proper counties. The bonds were all issued and are all outstanding, though there is a dispute as to the amount due on certain of them. In 1877, the Shenango and Allegheny Railroad Company also executed and delivered to John H. Devereaux, Trustee, another mortgage, (the extent and priority of the lien of which is also in dispute), upon its property, to secure the payment of bonds maturing the first day of

July, 1987, and aggregating in amount One million dollars, with semi-annual coupons attached for the payment of interest in January and July, at the rate of seven per cent per annum. This mortgage was executed and delivered and recorded in the Recorder's office of the proper counties in 1877. Under this mortgage, in the year 1877, there were issued bonds aggregating in amount Two hundred thousand dollars, all of which are still outstanding, and the Company subsequently issued to the First National Bank of Erie and the other appellants in this case, bonds aggregating in amount One hundred and seventy-five thousand dollars ($175,000), which the said appellants hold as collateral security for debts as hereinaster stated. From various causes this railroad company became in 1884, and now is, utterly insolvent, and this is admitted by all parties to this litigation. On the 15th day of March, 1884, Charles L. Young and H. W. Tyler, stockholders and creditors, filed a bill in the Circuit Court of the United States for the Western District of Pennsylvania to No. 17, May term, 1884, in equity, asking for the appointment of a receiver. (Page 141.) On the same day Thomas P. Fowler was appointed receiver and took possession of all and singular the assets, real and personal, of the said company, and has ever since continued in possession thereof. On the 1st day of May, 1884, in the same Court to No. 25 May term, 1884, in equity, John H. Devereaux, as trustee, filed his bill in equity against the Shenango and Allegheny Railroad Company, praying for a foreclosure of the Devereaux mortgage, and alleging that no interest whatever had been paid on any of the outstanding bonds under the said mortgage since the first day of January, 1878, and that there are outstanding under said mortgage, bonds amounting in the aggregate to Three hundred and seventy-five thousand dollars. (Page 6.)

Nothing was done under this bill, and on the 6th day of June, 1885, Henry Rawle, Trustee, presented his petition (p. 149) in the case pending at No. 17, May term, 1884, of Young & Tyler against the Shenango and Allegheny Railroad Co., setting forth in brief the execution and delivery to him by the Shenango and Allegheny Railroad Company of the mortgage to secure one million dollars of bonds; alleging that the same was a lien upon all the property of the Defendant Company; averring that the

whole million dollars of bonds were still outstanding and unpaid; that semi-annual coupons for the payment of interest, beginning on the 1st day of October, 1884, and those subsequently accruing, the Company had wholly neglected and refused to pay; that at that date (April 6th, 1885,) there was overdue and unpaid of interest alone on the first mortgage Seventy thousand dollars ($70,000); reciting the terms of the mortgage which authorized the trustees on a default in payment of any interest for the period of six months, to either enter upon and take possession of all the property, or *at his option* to sell the said property with or without entry; the mortgage, amongst other things, provided in case of default for six months in payment of any interest, that then, on the written request of bondholders aggregating in amount one-half of the mortgage bonds, the Trustees *should* proceed and sell all and singular the mortgage premises; and averring that the interest had been overdue for more than six months, and that more than one-half of the bondholders had made a written request to him to sell; setting forth the appointment of Thomas P. Fowler, as receiver, and that he was in possession of the property of the Defendant Company, and praying the Court, notwithstanding the possession of the receiver, to allow the petitioner, as Trustee, to proceed and sell under the power of sale given by and in accordance with the terms of the said mortgage. (Pages 155, 160, 161.) To this petition various answers were filed, objecting to the sale, and on July 31, 1885, after hearing, the Court filed an opinion (pages 168, 169) refusing permission at that time to sell, mainly on the ground that as the extent of the lien of the Rawle mortgage was in dispute, that it would not be for the best interest of the bondholders to sell under the Rawle mortgage alone, and suggesting that proceedings should be taken in the case then pending at No. 25, May Term, 1884, in equity, in the same Court, under which there could be a joint sale, both under the Rawle mortgage and the Shedd mortgage, thus undoubtedly giving the purchasers a good title to the whole of the property, real and personal, of the Shenango and Allegheny Railroad Company. The Court in the opinion said: "An early sale of the road as an entirety would undoubtedly conduce to the benefit of all its creditors." On September the 5th, 1885, John H. Devereaux, Trustee,

filed an amended bill at No. 25, May Term, 1884, of the said Court in Equity, wherein he joined as one of the defendants, Henry Rawle, Trustee, under the Rawle mortgage. This bill set out among other things that disputes had arisen between the bondholders under the Rawle and the Devereaux mortgages.

1. As to the extent of the lien of the Rawle mortgage.

2. The priority of lien of the Rawle and the Devereaux mortgages on certain branches.

3. The amount due on certain of the outstanding bonds under the Rawle mortgage (page 17).

It also set out that Receiver's certificates to the amount of One hundred and thirty-five thousand dollars had been issued and were outstanding. The amended bill, like the first bill, prayed *merely* for a foreclosure of the mortgage. On April 16th, 1886, the death of Mr. Devereaux was suggested Court, and John M. Shedd was appointed as his successor as Trustee in Mr. Devereaux's place. On May 8th, 1886, the appellants—the First National Bank of Cleveland, Ohio; the Second National Bank of Erie, Pa.; the First National Bank of Greenville, Pa.; the Mahoning National Bank of Youngstown, Ohio; Wick Bros. & Co., of Youngstown, Ohio, and Thomas H. Wells, of Youngstown, Ohio—filed their several petitions, asking leave to intervene. Together they hold One hundred and seventy-five thousand dollars in bonds under the Devereaux-Shedd mortgage, and these bonds are collateral for the following indebtedness as specified in their petition and subsequent answers in equity filed:

First National of Cleveland	$30,000
First National of Greenville	$20,000
Second National of Erie	$35,000
Mahoning National Bank	$10,000
T. H. Wells	$ 5,000
Wick Bros	$ 2,500

On June 10th, 1886, the petitioners were allowed to intervene. On June 12th, 1886, John M. Shedd, successor to John H. Devereaux, filed a second amended bill (page 47) in equity at No. 25 May Term, 1884, upon the said Devereaux mortgage.

which differed from the first amended bill as filed, chiefly in two particulars :

1. It gave a detailed description of the property, real and personal, of the Shenango and Allegheny Railroad Company.

2. It prayed for leave to execute the power of sale under the Devereaux-Shedd mortgage. On the same day, June 12, 1886, Henry Rawle, Trustee, filed an answer to the second amended bill of Shedd, Trustee. Rawle also filed a cross bill [page 64] setting forth substantially the execution and delivery to him by the Shenango and Allegheny Railroad Co., in April, 1869, of its mortgage upon its property, real and personal, to secure the payment of bonds aggregating in amount One million dollars; the fact that all the bonds had been issued and were still outstanding; that semi-annual coupons for the payment of interest at the rate of seven per cent. per annum, which matured in October and April of each year, were annexed to said bonds. That the coupons maturing October 1, 1884, aggregating Thirty-five thousand dollars, had not been paid, although duly demanded, and that the coupons also maturing April 1, 1885, and October 1, 1885, and April 1, 1886, had not been paid, showing that in interest alone under the Rawle mortgage, the Shenango and Allegheny Railroad Co. was in in debt One hundred and forty thousand dollars ($140,000); the bill also set forth the provisions of the Rawle mortgage, permitting the Trustee to sell without the intervention of any Court after six months default in the payment of interest. The bill admitted the dispute between Rawle and Shedd-Devereaux bondholders as to the extent of the lien of the Rawle mortgage, and also alleged that One hundred and seventy-five thousand dollars of bonds held by the appellants, the intervening banks and Wick Bros & Co. and T. H. Wells were illegally issued by the Shenango and Allegheny Railroad Co., and were not an outstanding indebtedness of said company; it also set forth the application made by Henry Rawle, Trustee, on June 6, 1885, in the case pending at No. 17, May Term, 1884, in Equity, for leave to sell under its power of sale in the mortgage, and the refusal of the Court to permit him so to do. The cross-bill among other things prayed that the said Rawle might be permitted to execute the power of sale contained in the mortgage to him. An

swers were filed to the cross-bill by all parties, and to the original bill by all parties except the appellants. The Shenango and Allegheny Railroad Co. by its answers (page 79, 81) both to the Shedd and the cross-bill, admitted both the execution and the delivery of the respective mortgages; the provisions of the said mortgages as to the powers of sale on the non-payment of interest and the fact that no interest whatever had been paid under the Devereaux-Shedd mortgage since January 1, 1878, and no interest whatever under the Rawle mortgage since April 1, 1884; and also admitted its insolvency and joined in the prayers of the Shedd and the Rawle bills for the sale of the property. Thomas P. Fowler, Receiver, also filed answers to the Shedd original and the Rawle cross-bill (pages 85, 87) admitting the insolvency of the company, and the non-payment of interest and submitting himself to the jurisdiction of the Court. The First National Bank of Cleveland (page 92); The First National Bank of Erie (page 97); The First National Bank of Greenville (page 103); The Mahoning National Bank of Youngstown (page 109); Wick Bros. & Co. (page 119), and T. H. Wells (page 114) also filed answers to the cross bill of Henry Rawle, Trustee. These last answers also admitted the insolvency of the Company, the execution and delivery of the Rawle and the Shedd mortgages, but they insisted that the Rawle mortgage was only a lien on a portion of the property of the Defendant's Company, and that a number of outstanding bonds under the Rawle mortgage had really been paid, and on them nothing was then due. They each contained the following prayer: "*That an accounting may be had and taken in the premises of the amount of bonds outstanding in the hands of bona fide holders for value, may be determined; that the extent of the lien of each mortgage may be judicially determined and upon the final determination of the matter, and not before, that an order of sale may be issued to sell the mortgage premises.*" The appellants did not file answers to the original bill of Shedd, Trustee. On the contrary, in their answers to the Rawle cross bill (95) they expressly adopt the allegations of Shedd, Trustee, in his amended bill. See also pages 101, 107, 112, 117, 123. On June 18, 1886, John M. Shedd, Trustee, and Henry Rawle, Trustee, by their solicitors, moved for leave to execute their powers of sale under their mortgages, and also for an order for

sale of the property of the Shenango and Allegheny Railroad Co. covered by the Rawle mortgage and the Shedd-Devereaux mortgage, it being admitted by all parties that all the property of the Defendant Company was covered by one or the other of these mortgages. This motion was heard at great length in the Court below; all the records, affidavits receiver's reports, etc., in the case at No. 17 May Term, 1885, in which the receiver was appointed, being offered, heard and considered by the Court. The consideration of all the Receiver's reports as to the comparative condition of the Shenago and Allegheny Railroad Company on March 15, 1884, and June 30, 1886, showed the following results: Including the capital stock; the total indebtedness of the Shenango and Allegheny Railroad Company on March 15, 1884, was $1,977,223.66. The indebtedness on March 21, 1886, the last account preceding June 30, 1886, was $2,196,779.34. This was an increase of indebtedness of $219,555.68. Of this, were Receiver's certificates outstanding of $165,965.16, all of which were prior to the Devereaux mortgage. The Court below, on July 13, 1886, filed an opinion (page 125) saying that the property of the railroad company should be sold, and that a decree of sale would be entered, but suggested that the parties agree upon a form of the decree. The parties could not agree and on October 18, 1887, the Court entered the decree (page 126, 127) for the sale of the property on the 25th day of January, 1887. This sale is to be a joint one. (1) By Henry Rawle, Trustee, under the power of sale in the mortgage to him. (2) By John M. Shedd, Trustee, under the power of the sale in the mortgage to John H. Devereaux, Trustee, of whom he was the successor. (3) The Court finding that all the property of the Defendant company was subject to the lien of either of the Rawle or the Devereaux mortgage, and that there were conflicting claims to the priorities of the liens, and that there were also conflicts between bondholders and in reference to the number of bonds legally outstanding and unpaid under the respective mortgages, and also conflicting claims in reference to the amount of money due on said respective bonds, and also finding that the Shenango and Allegheny Railroad Company was insolvent, and that it was to the best interest of all the credi-

tors that the said property should be sold, and that a sale of the same is prayed for under the amended bill filed by the said Shedd, Trustee, and the said cross-bill of the said Rawle, Trustee, the Court appointed John M. Shedd and Henry Rawle (the solicitors of the Shenango and Allegheny Railroad Company and the Receiver respectively, acquiescing therein) special commissioners to sell all the property real, personal and mixed of the railroad company. The purpose of making title in these three ways was to insure to the purchaser an undoubted title to the property. The proceeds of the sale, less the actual outlays for costs and expenses of the same (which latter have to be approved by Court), are to be paid into the Treasury of the Court. A provisional scheme for the utilization of Receiver's certificates and the bonds under the Rawle and the Shedd mortgages was made. This was temporary and conditional only and additional security had to be given that the amount paid in cash would be increased, if required. The last paragraph of the decree is in the following words: "(13) All disputes and controversies between the two mortgage Trustees (the said Rawle and the said Shedd) or the bondholders under the said two mortgages touching the extent of the lien of the said mortgages respectively, or the priority of the lien of the said mortgages respectively, as well as all questions concerning and touching the amounts due bondholders respectively under the said two mortgages are hereby respectively reserved for future consideration and determination unaffected by anything in this decree."

So far as Appellants are concerned, the only two questions which they ask to be determined before a sale should take place are not decided, but expressly reserved as questions properly arising on distribution of the fund. See prayer of Appellants on preceding page.

It is from this interlocutory decree or order of sale that this appeal is taken.

ARGUMENT.

(1) *The decree appealed from is not, so far as Appellants are concerned final, but interlocutory only.*

In order that it may be reviewed here the decree of the Court below *on the questions in dispute between the Appellant and the Appellees must be final.*

The Appellants are: The First National Bank of Cleveland; The Second National Bank of Erie; The First National Bank of Greenville; The Mahoning National Bank of Youngstown; Wick Brothers & Co., and T. H. Wells.

However final the decree might be on some points against the Shenango and Allegheny Railroad Company is immaterial, because that party does not appeal.

In Whitney vs. the Bank of the U. S., 13 Peters, 15, this Court held—

"No party to a decree can by the general principles of equity claim a reversal of a decree upon a bill of review unless he has been aggrieved by it."

In Farmers' Loan & Trust Co. vs Waterman, 12 A. & E. R. R., Cases 402, the Supreme Court laid down the general rule as follows: "Only parties to a decree can appear. If a party to the suit is in no way affected by what is decreed, he cannot be said to be a party to the decree."

What then are the questions in dispute between the Appellants and the Appellees? The Appellants are holders of bonds under the Devereaux Shedd mortgage. They did not file an answer to the Shedd Bill but admitted its averments. As shown they expressly adopted the allegations of Shedd in his amended bill. See pages 95, 101, 107, 112, 117, 123. So far as the Devereaux Shedd mortgage is concerned under the pleadings, Shedd's allegations in his bill are admitted, and he (Shedd) may execute his power of sale.

There is then *no dispute* between the appellants of the one part and Shedd, trustee, of the other part, but on the contrary the appellants allege Shedd has all the powers and priority of lien he claims in his bill.

The only disputes are between the appellants and Henry Rawle, Trustee under the first mortgage.

By this we mean that, as the record shows, these were the only disputes in the Court below. We do not, of course, mean

that assignments of error may not be filed, alleging a number of disputes for the purpose of defeating this motion.

What are these disputes? In no better way can they be stated than to refer to the prayers of the cross-bill and the prayers in the answers of the appellants and the terms of the decree. These prayers material to the case in its present aspect are as follows: The cross-bill prayed for leave of Court to exercise the power of sale given to Henry Rawle, Trustee under the mortgage, and that the money arising therefrom shall be paid into court for the purposes of distribution. Each one of the appellants filed an answer to the cross-bill and they each prayed as follows: "Wherefore, your respondent prays that an accounting may be taken in the premises of the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined; that the extent of the lien of each may be judicially determined, and upon the final determination, and not before, *that an order of sale may be issued to sell the mortgaged premises.*"

Both the Appellants and the Appellees then agreed that there should be a sale of the mortgaged property. They differed only in this: The Appellants say that before a sale the Court should determine, (1) the amount of bonds outstanding in the hands of *bona fide* holders. (2) The extent of the lien of each mortgage. The questions then in dispute between the Appellants and the Appellees is, should the decree for sale in the Court below have been made before these two questions were determined, and does the decree of the Court below, within the decisions of this Court finally decide and pass upon the merits of the case? Or, to state the matter a little differently: The Shedd bill asked for a sale; the road was becoming every month more embarrassed, and as the extent and priority of the lien of the Rawle mortgage was in dispute, the Shedd bill prayed that the property be promptly sold free from the Rawle mortgage, and that the dispute be relegated to the fund; the Rawle cross-bill acquiesced in this; the appellants (Shedd bondholders) then intervened and sought, and still seek, to have the sale postponed until the dispute as to the Rawle bonds is settled. The Appellants do not deny that a sale must, eventually, take place; they

do not deny that the best way to make the sale, so as to bring the highest price, is to sell free of all liens; they do not ask to redeem the Rawle mortgage; they do not, in fact, say *why* they wish the amount due on the Rawle bonds ascertained; they do not deny that the road is hopelessly insolvent and that every month's delay in executing the order of sale will prejudice both sets of bondholders, yet in face of all these facts, and in the teeth of the unquestioned and unquestionable necessity for an immediate sale, they rely upon the bald proposition that a court of equity cannot save property from ruin by an interlocutory order of sale, because, according to good chancery practice, the shares in the ruin must first be determined. The whole purpose of the action of the Trustees under both mortgages, of *all* of bondholders under the Rawle mortgage, and of a vast majority of those under the Shedd mortgage, is to sell in order to save the road from utter wreck. The minority of the Shedd bondholders, the Appellants, think that the wreck should first be a total one, that the shares *in* the wrecked road should first be ascertained; and that the wreck should then, and not until then, be sold. The object of the present motion is to prevent, if possible, the consummation of this scheme of the minority bondholders.

The decree of the Court below provided for a sale of this property, (1) under the power of sale in the Rawle mortgage; (2) under the power of sale in the Shedd mortgage; (3) under the power possessed by a court of chancery to sell encumbered and perishable property held by its receiver. Under the decree the proceeds of sale are paid into Court and await the distribution of the Court.

The last paragraph of the decree provides as follows: "All disputes and controversies between the two mortgage Trustees (the said Rawle and the said Shedd) or the bondholders under the said two mortgages touching the extent of the lien of the said mortgages respectively or the priority of the lien of the said mortgages respectively, as well as all questions concerning and touching the amounts due bondholders respectively, under the said two mortgages, are hereby expressly reserved for future consideration and determination unaffected by anything in this decree."

Is such a decree which converts property into cash for the purpose of distribution, and which reserves all questions of distribution, a final one, on which an appeal will lie to this Court?

By Section 692 of the Revised Statutes an appeal in a case in equity to this Court lies only from a *final decree*. This Court has several times defined a final decree: In Beebe et al. vs. Russell, 19 Howard, 285, it is said "when a decree finally decides and disposes of the *whole merits of the case* and reserves no further question or direction for the future judgment of the Court, so that it will not be necessary to bring the cause again before the Court for its final decision, it is a final decree."

In Bostwick vs. Brinkerhoff, 106 U. S., 3, the language used was: "The rule is well settled and of long standing that a judgment and decree to be final within the meaning of that term as used in the Acts of Congress giving this Court jurisdiction on appeal and writs of error, *must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the Court below would have nothing to do but to execute the judgment or decree it had already rendered.*"

In Grant vs. Phoenix Insurance Company, 106 U. S., 130, "The rule is well settled that a decree to be final within the meaning of that term as used in the Acts of Congress giving this Court jurisdiction on appeal, must terminate the litigation of the parties on *the merits of the case*, so that if there should be an affirmance here the Court below would have nothing to do but to execute the decree it had already rendered."

In the St. Louis, Iron Mountain and Southern Railroad Company vs. the Southern Express Company, 108 U. S., 28, the rule was again stated as follows: * * * "A decree is final for the purposes of an appeal to this Court *when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined.*"

Thompson vs. Bean, 7 Wallace, 342.
St. Clair County vs. Lovingston, 18 Wallace, 628.
Parcels vs. Johnson; 20 Wallace, 653.
Railroad Company vs. Swasey, 23 Wallace, 405.
Crosby vs. Buchanan, 23 Wallace, 420.

Commissioners vs. Lucas, 93 U. S., 108.
Greene vs. Fisk, 103 U. S., 518.
Ex parte Norton, 108 U. S., 242.

Whatever may have been in earlier days the rule as to what was a final decree, these cases certainly settle the question, and the tests to be applied are :

1. Does the decree below terminate the litigation between the parties on the merits of the case.

2. Does the decree below "leave nothing to be done but to enforce by execution what has been determined."

The purpose of the litigation in the Court below was the distribution among the creditors of the proceeds of sale of the property of the Shenango and Allegheny Railroad Company, there being no dispute as to the question of sale, but only whether it should be made before or after the dispute as to the Rawle mortgage should be settled. The Appellants, as well as Rawle, Trustee, and Shedd, Trustee, and the Shenango and Allegheny Railroad Company, all prayed for a sale of the property, and this, because only by a sale and a distribution of the money among lien creditors could the respective rights of the creditors be determined. The decree as made merely turns the property into money, and this money goes into the treasury of the Court and is subject to its further orders. It is exactly analogous to the sale of perishable property, because in every true sense the property of this Railroad Company is perishable, and, as the accumulating debt shows, will be worthless to the bondholders if this ruinous delay is long continued.

In the case of Turner vs. Railroad Company, 8 Bissell, 380, Circuit Court of the United States, Southern District of Illinois, (1878,) the Court laid down the general principle that where the amount of claims to be allowed against a railroad, depends upon a long course of litigation, it is proper for the Court to order the property sold, to be subject to such claims as finally adjudicated; and in the case of Hand vs. Railroad Company, 13 South Carolina Report, 467, the same general principle was followed, the Court laying the rule as follaws: Where the rights of the several classes of creditors of a railroad corporation have been declared and the condition of the road demands an early sale,

such sale will not be postponed until the interests of individual creditors have been adjusted, and the class to which these demands belong has been ascertained.

The decree expressly reserves all disputes between the bondholders or between the respective mortgages whatever those disputes may be for the future judicial determination of the Court. *The real* material question, therefore, in dispute between the Appellants and all the other bondholders and trustees under the Rawle and the Shedd mortgages is as to who is entitled to the money coming from the sale. This sale necessarily precedes the distribution and leads up to it, but it *does not terminate the litigation between the parties on the merits of the case.* After the sale is made and the question of distribution arises, then the respective priority of the mortgages as the amount due on the bonds become material questions. The question of order as to whether a sale should be made *before* or *after* the determination of these questions certainly *does not finally decide* "the merits of the case."

Applying the second test as to whether anything remains to be done in the Court below, except "to enforce by execution what has been determined," it is apparent that the decree below is not final. When the property is sold and the proceeds paid into the Treasury of the Court, then the real merits of the controversy arises.

What is the extent of the Rawle mortgage? Which has priority of lien over certain branches, the Rawle or Devereaux mortgage? What amount is due on the outstanding bonds? Were the bonds to the Appellants illegally issued? All these and other questions will then arise and must be decided before the money can be distributed.

In the last amended bill filed by Shedd, Trustee, he averred that the Receivers' certificates outstanding were as follows: Principal, $165,956.16; interest, $10,106.29—and that all these were claimed to be first liens on all the property (page 51). The record will be searched in vain to find any objections by the Appellants in the Court below to these averments. They admitted them to be true.

Therefore, on principle, this decree appealed from is not final, but interlocutory. The case of Butterfield vs. Usher, 91

U. S., 247, we think rules this. There, an appeal was taken from the decree of the Supreme Court, of the District of Columbia, ordering the sale of certain property, and this Court said: "The decree here appealed from disposes finally of a motion made in the case, and not of the case itself. It simply sets aside one sale that had been made, and ordered another. A decree confirming the sale would have been final. But this decree is analogous to a judgment or reversal with direction for a new trial or a new hearing, which, as had been often held, is not final. Where the practice allows appeals from interlocutory decrees an appeal might lie from such a decree as this. Such was the practice in New York. 2 Rev. Stat., (N. Y.) 605, Sects. 78, 79, id 178, Sect. 5962. Consequently it was said in Dellaplane vs. Lawrence, 10 Page, 604, "In sales by Master's under decrees and orders of this Court, the purchasers who had bid off the property and paid their deposit in good faith are considered as having inchoate rights, which entitle them to a hearing upon the question whether the sales shall be set aside; and if the Court errs by setting aside the sale improperly, they have the right to carry the question by appeal to a higher tribunal." But our jurisdiction upon appeal is statutory only. If some Act of Congress does not authorize a case to be brought here, we cannot take jurisdiction. Appeals can not be taken to this Court from the Supreme Court of the district, except after a final decree in the case by that Court. The decree in this case not being final we have no jurisdiction." The decree for sale in this case is madeexpressly subject to the approval of the Court below and the rght of that Court to set aside.

In Beebe et al. vs. Russell, 19 Howard, 285, among other interlocutory decrees was stated to be a reference to a Master of the Court "to sell estates." In Forgay vs. Conrad, 6 Howard, 205, (a case that has been cited for the contrary view) this Court held that where money is directed to be paid into Court, that the order was interlocutory only "and intended to preserve the subject matter in dispute from waste or dilapidation, and to keep it within control of the Court until the rights of the parties concerned can be adjudicated by a final decree."

And this position was also taken in the case of Young et al. vs. Executors of John Parks, deceased, 15 Peters, 287. In that

case the Court held that a decree of the Circuit Court confirming the report of a Master finding the amount of money in the hands of Executors, and that the complainants should have execution for that sum, and that the residues of the debts when collected should be paid into Court for distribution to be made under its direction, was an interlocutory and not a final decree, saying:

"We are of opinion that the decree is an interlocutory and not a final decree, in the sense of the Act of Congress. It is plain that it does not dispose of the whole matter in controversy between the parties. And if an appeal could now lie upon the decree already rendered, an appeal could also lie from time to time, from any future decree of distribution of any assets which may be collected after the former decree *toties quoties*; without any final decision being made of all the matter in controversy. In our judgment this would be against the clear import and intention of the Acts of Congress, which were designed to give an appeal only from the decree final upon the whole matters and merits of the controversy. The consequence is that the appeal must be dismissed with costs."

There may be some conflict in the cases on this question, for Mr. Chief Justice Waite, in the case of Bostwick vs. Brinkehoff, 160 U. S., 94, said: "It has not always been easy to decide when decrees in equity are final within this rule, and there may be some apparent conflict in the cases on that subject." Perhaps many of the cases may be reconciled.

This Court *has* held that a decree of foreclosure where the amount due has been ascertained and execution awarded for the sale of the property in order to pay that amount, is a final decree from which an appeal will lie to this Court, and that *because* in accordance with the tests already applied (1) that there has been a final decision on the merits of the case, and (2) nothing remains to be done but to enforce the decision of the Court. Under this doctrine come the cases of Ray vs. Law, 3 Cranch, 179; Whiting vs. the Bank of the United States, 13 Peters, 115.

Railroad Co. vs. Soutter, 2 Wallace, 440.
Bronson vs. Railroad Co., 2 Black, 529.
Forgay vs. Conrad, 6 Howard, 203.

In Bebee et al. vs. Russell, 19 Howard, 284, the previous cases on this question are considered by this Court as follows:

"In the case of the Palmyra (10 Wheaton, 502) wherein a libel for a tortious seizure, restitution with costs and damages had been decreed, but the damages had not been assessed, this Court held that the decree was not final and dismissed the appeal. It said the decree of the Circuit Court was not final in the sense of the Act of Congress. *The damages remain undisposed of, and an appeal may still lie upon that part of the decree awarding damages.* The whole cause is not therefore finally determined in the Circuit Court, and we are of the opinion that the cause cannot be decided so as to bring up distinct parts of it." This Court also ruled in Brown vs. Swann 9 (Peters, 1) that a decree enjoining a judgment at law taxing a sum which remained to be ascertained with precision, is not final, to permit an appeal from it. We might multiply citations from the reports of this Court to show its caution upon this subject. We feel very confident no case has been decided by it when the question of the finality of a decree or judgment has been brought to its notice in which the distinction between final and interlocutory decree has not been regarded as it was meant to be by the legislation of Congress, and as it was understood by the Courts in England and in this country before Congress acted upon the subject. A decree was understood to be interlocutory whenever an inquiry as to the matter of law or fact is directed, preparatory to a final decision. (1 New, 327.) And we find it stated in the second volume of Perkins Daniels Chancery Practice, 1193, "that the most usual ground for not making a perfect decree in the first instance is a necessity which frequently exists for a reference to a Master of the Court to make inquiry, or to take accounts, or *sell estates* and adjust other matters which are necessary to be disposed of, before a complete decision can be come to upon the subject matter of the suit. "When a decree finally decides and disposes of the whole merits of the cause and reserves no further questions or directions for the future judgment of the Court, so it will not be necessary to bring the cause again before the Court for its final decision, it is a final decree. It is true a decree may be final, although it directs a reference

to a Master, if all the consequential directions depending upon the result of the Master's report are contained within the decree so that no further decree of the Court will be necessary upon the confirmation of the Court to *give the parties the entire and full benefit of the previous decision of the Court.*

Mills vs. Hoag, 7 Paige, 18.

"We have just said the decree is final when the ministerial duties are only to be done to ascertain the sum due. The case of Ray vs. Law, in 3 Cranch, 179, is an instance. It was there ruled by this Court that a decree for sale under a mortgage is such a final decree as may be appealed from. Afterwards when that case was cited in the case of Palmyra, (10 Wheaton, 502), Marshall, Chief Justice, said to the Court: "In that case, which was an appeal in an equity cause, there was a decree of foreclosure and sale of the mortgage property. The sale could only be ordered after an account taken, for the sum due on the mortgage ascertained in some other way. And the usual decree is, that unless the defendant shall pay that sum in a given time the estate shall be sold. The decree of sale, therefore, is in such a case final upon the rights of parties in controversies, and these ministerial duties only to be performed. In such a case the direction is but a consequence of the decree and no further decree is necessary. A decree upon the filing of the Master's report, on a bill for specific performance ascertaining the quantity of land to be conveyed, and the balance of money to be paid, and that the conveyance should be executed on such balance being tendered, is a final decree. (Naies vs. Waters, 1 Johns. Ch. 85). But in the last case cited it would not have been final if the decree had not directed the conveyance of the land upon the sum found by the Master being tendered. It has been supposed that this Court did not apply its present interpretation of the laws regulating the appeal in the cases of Whiting vs. the Bank of the United States (13 Peters, 6); Michane vs. Good (4 Howard, 503), and in Forgay et al. vs. Conrad (6 Howard, 301).

"This is, however, not so. Whiting's case, in that part of it relating to appeals was only what this Court had said in Ray vs. Law, in the case of the Palmyra before cited, that a decree

of foreclosure and sale is final upon the merits of the controversy, and an appeal lies therefrom. In Michane vs. Good no such point is made in the argument of it nor touched upon in the opinion of the Court. In Forgay's case it was made on the decree given by the Court below, and it was adjudged by this Court to be final to give this Court jurisdiction of it. But it was so upon the ground that the whole merits of the controversy between the parties had been determined, *that execution had been awarded*, and that the case had been referred to the Master merely for the purpose of adjusting the accounts. The fact is the *order of the Court in that case referring it to a Master was peculiar*, making it doubtful if it could any way control or qualify the antecedent decrees of the Court upon the whole merits of the controversy, or modify it in any way, *except upon a petition for a rehearing*. We refer to the case, however, with confidence to show that the reasoning of the opinion is cautionary upon the subject of bringing appeals and confirmation of what we have said in this case."

In Railroad Company vs. Bradley, 7 Wallace, 576, the purpose of the suit was *to prevent a sale*, and a preliminary injunction had been issued. A decree dissolving this and ordering sale was held to be a final decree, and obviously because it decided the case on its merits, i. e., the question of whether there should be a sale—not a mere question of order as to whether the sale should be held before or after other collateral questions were decided. Even in that case this Court said the decree might not have been final if the decree had merely *permitted—not ordered a sale*.

In determining whether the decree in the case at bar is a final one, it must not be overlooked that it must be final as *between* the Appellants of the one part and Rawle and Shedd, Trustees, the Plaintiffs in the original and cross-bill of the other part. The Shenango and Allegheny Railroad Company is satisfied with the decree. It, the Mortgagor, admits that Rawle and Shedd as Trustees are entitled to sell under the powers of sale in the mortgages and that the railroad company being insolvent its property ought to be sold and the proceeds distributed among its creditors. Now, it as between the Railroad

Company and the Trustees, Rawle and Shedd, this is a plain right of the Trustees under the mortgages, how can these Appellants, whose only real claim is to their share of the proceeds of sale, prevent it, and say that before the sale certain questions which are not provided for in the mortgages must be determined. In Bronson vs. R. R. Co., 2 Black, 531 and 532, this Court held that the fact that different lien creditors were disputing did not and could not prevent the mortgages from proceeding to *foreclosure* and sale of the mortgaged property.

2. *This appeal is taken merely for the purpose of delay.*

The decree in the Court below was entered on October 14, 1886. The Appellants' counsel from Ohio, who has charge of this appeal, went to Washington City and had the appeal allowed on November 5th, 1886. On November 24th, 1886, he had a bond approved in Washington City. *No notice of this was given to any counsel of the Appellees, and no paper filed in the Clerk's office until December 7th, 1886.* The sale had been fixed by the Court below for January 25th, 1887. The record had to be made up; printed briefs prepared and served three weeks before this motion could be filed. The intervening holidays and the usual adjournment of this Court on the first of February, made it quite probable that it would be impossible to obtain a decision on this motion before the time fixed for sale. If it had not been the purpose of Appellants to delay this sale but to speed the proceedings, a notice to us of the appeal in November would have insured a hearing and decision of this motion before the day of sale, January 25th, 1887. The total claim of the Appellants amounts to One hundred and two thousand five hundred dollars ($102,500). The debts of the Appellees amount to Two million ninety-four thousand seven hundred and seventy-nine and thirty-four one-hundredths dollars ($2,094,779.34-100).

Of course the Appellees are losing almost twenty dollars to the Appellants one dollar by delay. The Court below guarded the rights of Appellants in every way, and fixed the minimum price for the property at $625,000, and even then made the sale subject to its approval and confirmation.

Viewed in connection with the foregoing argument and

with our subsequent remarks on the question in dispute, is it not apparent that the Appellants have more to gain by hope of some forced contribution to them than by any real results they will gain by this appeal?

If this case is held and not heard until reached in the regular call it will not be decided, say before the winter of 1890 or spring of 1891. What will become of this small railroad before a sale can then be had, it will not be difficult to tell. What possible favorable result to the Appellants could such delay bring, even if this Court should say that no sale could take place until all questions of priority of lien were settled?

3. *The questions on which the jurisdiction depends are so frivolous as not to need further argument.*

The Appellants and Appellees in the case at bar all pray for a sale of the property of the Shenango and Allegheny Railroad Company. They dispute only as to the time when it should be made.

The prayer of Appellants is—and it is the same in each of their answers—"Wherefore, your respondent prays, that an accounting may be had and taken in the premises, and the amount of bonds outstanding in the hands of *bona fide* holders for value may be determined; that the extent of the lien of such mortgage may be judicially determined, and upon a final determination of the matters and *not before* an order of sale may be issued to sell the mortgaged premises.

The questions these appellants wish decided before a sale, as shown by this prayer are (I) The amount of bonds outstanding in the hands of *bona fide* holder for value. (II) The extent of lien of each mortgage to be judicially determieed. These are the only two questions which the appellants pray may be passed upon before a sale. They do not pretend that either of the mortgages are not valid existing liens to some extent. They do not pretend that under each mortgage there is any question as to the right of the Trustees to proceed and sell. They say that the two things above stated are the only things they ask to be determined before a sale. (I) The amount of bonds outstanding in the hands of *bona fide* holders. (II) The *extent* of the lien of each mortgage. Not the validity of either of the mortgages, but the extent of the lien of each.

The Court below held that it was to the interest of all creditors, including the appellants, that this property should be sold at once. The Trustee, Rawle and the Trustee, Shedd, had a clear legal right to sell under each mortgage were it not for the possession of the Receiver appointed by the Court below. This being so what right has the appellants to intervene and say that before the Trustees execute the legal powers of sale given to them in the mortgage the Court below must pass upon and determine the amount of the outstanding bonds and the extent of the lien of each mortgage. If the Rawle mortgage does not cover the entire property, the Railroad Company and the appellants are bound only by its terms and the power of sale in the mortgage is just as undoubted as if it covered the whole property. The sole question then in dispute between the appellants and the appellees, so far as this appeal is concerned, is:- Was the decree of the Court below in ordering the sale for January 25, 1887, *before* passing upon and finding the amount of bonds *bona fide* outstanding and also the extent of the lien of each mortgage erroneous? That it is not erroneous but is merely carrying out the undoubted legal right given to each of these trustees under these mortgages seems to be also apparent. The very purpose of inserting the powers of sale in these mortgages was to prevent this tedious and expensive litigation and delay to the bondholder in realizing on his security. For a holder of bonds under the Devereaux mortgage to claim that he may intervene or file a bill in equity and prevent sale under the Rawle mortgage because the mortgage on its face is uncertain as to the extent of its lien and also because there is some question as to the amount of bonds outstanding under it is to write into the Rawle mortgage a provision which neither the Mortgagor or the Mortgagee agreed upon, and to encumber and fetter the security which the bondholder thought he had in a speedy sale under the power of sale given in that mortgage.

Since this brief was prepared and placed in the printer's hands, and when it is too late to carefully examine them, twenty four [24] assignments of error have been handed us by Appellants.

We believe they all fall within the following heads:

1. In so far as they are to findings of facts, an examination of the Shedd amended bill [page 46], the Rawle cross-bill [page 81], and the answers of Appellants (pages 95, 101, 107, 112, 117, 123), will show either [*a*] that such findings are not against the Appellants, whose rights are saved by the last clause of the decree, or [*b*] that the Appellants in the Court below did not raise any question on such finding—for example—as to priority of Receiver's certificates, or [*c*] that the findings are upon immaterial questions—for example: The Rawle mortgage expressly provided [pages 75, 76] that on non-payment of interest the Trustee might [1] enter upon and take possession of the mortgaged property, collect the revenues and apply them to the coupons and bonds; [2] or the Trustee *might*, with or without an entry, proceed and sell all the mortgaged property; or [3] on petition of one-half of the bondholders he *should* proceed and sell. As the Trustee moved in the Court below for leave to sell, it is immaterial whether one-half of the bondholders petitioned that he should sell or not, and it is equally immaterial whether the interest over-due amounts to over $70,000 or not. That some interest for more than six months is unpaid cannot be gainsayed, and this authorizes Rawle Trustee, to sell. The Shedd-Devereaux mortgage [page 55] provides that upon default being made for eighteen months in the payment of any interest, then one-tenth in amount of the bondholders might elect that the principle of the debt should be due and payable and upon a finding of fact of the default of interest the Trustee might proceed and sell. Shedd in his amended bill averred this default at this election [page 49]. The Appellants in their answers to cross-bills [page 95] expressly adopted the amounts of the bill as to the terms, execution and delivery of the mortgage—admitted in so many words default in payment of interest. They filed no answer to the Shedd amended bill and in no way denied Shedd's averment that one-tenth had elected that the principal of the bonds should mature.

Yet now a finding of fact to that effect is assigned as error.

In so far as these assignments are the questions of law they are already considered.

Fourth—If there is any question on which as between the Appellants and the Appelees this Court thinks the decree is final and should decline as a whole to dismiss it or affirm it, then as there is no dispute between Shedd, Trustee, and the Appellants as to the averments in Shedd's Bill—and as these averments entitle Shedd to execute his power of sale in the Devereaux-Shedd Mortgage the Appellee Shedd, would be allowed to proceed and sell under the power of sale in the Devereux-Shedd Mortgage—And as a Court of Chancery is authored to sell encumbered perishable property in its possession and distribute the proceeds of sale among heir creditors, Rawle and Shedd as Special Commissioners of the Court below should be allowed to execute the power of sale conferred on them as Commissioners in the Decree below.

Where a property is in possession of a Court of Chancery, is encumbered with liens concerning which there are disputes and especially where it is of a nature to depreciate in value, the Court may order its sale. This is distinctly recognized in Beebe vs. Russell, 19 Howard, 284. Forgay vs. Conrad, 6 Howard, 205. High on Receivers [2nd Edit] Sec. 192. Crane vs. Ford; Hopkins Chancery Rpt. Sec. 192.

A sale of the property of this Railroad Company is absolutely necessary if the best interests of all the creditors of the Company are to be protected. A sale which will give to the purchaser an undoubted title is what we pray for.

If in the wisdom of this Court any change should be made in any particular in the Decree to effect such a sale and yet not finally decide any other questions, we will willingly submit to it. We do most earnestly insist that three or four years delay can benefit no one—will injure every one.

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FRANCIS RAWLE.
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Solicitors for Henry Rawle, Trustee.